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ABSTRACT

This congressional hearing focuses on the Economic Dislocation and Worker Adjustment Assistance Act, which includes features of the prior year's Labor-Management Notification and Consultation Act of 1985 as well as new provisions enacting economic dislocation and worker adjustment task force recommendations. Testimony includes statements and prepared statements, letters, and supplemental materials from individuals representing the United Automobile, Aerospace, and Agricultural Implement Workers of America, International Union, United Auto Workers (UAW), AFL-CIO; Allied Signal, Inc.; USX Corp.; Subcommittee on Employment of the United States, U.S. Conference of Mayors; National Center on Occupational Readjustment; Interstate Conference of Employment Security Agencies, Inc.; United Food & Commercial Workers International Union, AFL-CIO; UAW; National Association of Manufacturers; and Washington State Employment Security Department. The text of the bill is attached. (YLB)

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ECONOMIC DISLOCATION AND WORKER ADJUSTMENT ASSISTANCE ACT, H.R. 1122

HEARING

BEFORE THE

SUBCOMMITTEES ON
LABOR-MANAGEMENT RELATIONS

AND

EMPLOYMENT OPPORTUNITIES

OF THE

COMMITTEE ON EDUCATION AND LABOR
HOUSE OF REPRESENTATIVES

ONE HUNDREDTH CONGRESS

FIRST SESSION

HEARING HELD IN WASHINGTON, DC, MARCH 17, 1987

Serial No. 100-53

Printed for the use of the Committee on Education and Labor

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ECONOMIC DISLOCATION AND WORKER ADJUSTMENT ASSISTANCE ACT, H.R. 1122

TUESDAY, MARCH 17, 1987

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON LABOR MANAGEMENT,
SUBCOMMITTEE ON EMPLOYMENT OPPORTUNITIES,
COMMITTEE ON EDUCATION AND LABOR,
Washington, DC.

The subcommittees met, pursuant to notice, at 9:34 a.m., in room 2261, Rayburn House Office Building, Washington, DC, Hon. Matthew G. Martinez presiding.

Members present: Representatives Martinez, Clay, Ford, Kildee, Hayes, Sawyer, Jontz, Jeffords, Petri, Roukema, Gunderson, Grandy, and Ballenger.

Staff present: Frederick L. Feinstein, counsel; Bruce Packard, legislative assistant; Eric P. Jensen, staff director; and Tammy Harris, clerk.

Mr. MARTINEZ. This hearing will come to order.

We have with us today the Chairman of the Labor-Management Relations Subcommittee, Bill Clay, and we have joining us on the panel a member of that subcommittee also, Marge Roukema.

I would like to start this meeting by saying that this is a joint meeting of the Employment Opportunities Subcommittee and the Labor-Management Relations Subcommittee. We are to receive testimony on H.R. 1122, the Economic Dislocation and Worker Adjustment Assistance Act.

This bill includes features of last year's H.R. 1616, the Labor-Management Notification and Consultation Act of 1985, as well as new provisions enacting Secretary Brock's economic dislocation and worker adjustment task force recommendations.

The same joint subcommittees held a hearing last May and heard from economists, labor officials, employer organizations, who all agreed that plant shutdowns and worker dislocations were a growing problem confronting our nation.

In the past 5 years, over 5 million Americans lost their jobs as a result of plant shutdowns, and an average of 18,000 plants closed annually, affecting every region of the country. These plant shutdowns have had a devastating impact on our economy and have resulted in massive unemployment.

Communities are eroded by plant shutdowns and mass lay-offs. State and local governments lose their source of revenues and are burdened by increased welfare and training expenditures. Yet, the deeper tragedy is that productive human lives are being destroyed,

often without any forewarning from their employers. Meanwhile, companies are forced to close down or scale down drastically without having one chance to recover from their loss of productivity.

Studies have shown that advance notice of plant dislocations would help workers make the job transitions and adjustments that will keep their families afloat. Where early notice and labor and management cooperation occur, proposals have been put together which have enabled plants and companies to stay in business.

In my own district in Los Angeles, the Bethlehem Steel plant closing in 1982 displaced 1,500 workers at a loss of salary to workers in the community of three-quarters of a million dollars per week. According to estimates, only 50 percent of those workers have attained other employment as of last year.

The time has come for this country to confront this serious crisis. Even this administration recognizes that dislocated workers and the eroding industrial sector of our economy require special assistance. This bill provides a reasonable notice requirement, which is waived for unavoidable business circumstances. Clearly, both the private and the public sector can agree that this legislation is headed in the right direction.

This major drag on our economy and productivity has to be corrected. A bipartisan effort on behalf of legislation like this is essential toward getting our nation back on a competitive track.

Mr. Clay.

Mr. CLAY. Thank you, Mr. Chairman.

I ask unanimous consent to insert my statement at this point in the record and just like to say that since we began hearings on this legislation in the early seventies, the number of dislocated workers has grown and the difficulties they face have increased substantially.

So, I am happy to see that there seems to be a consensus building that recognizes the real plight of these workers. Hopefully, this committee will deal with it with dispatch and move this bill to the full committee, and then to the floor of the House.

Mr. MARTINEZ. Thank you, Chairman Clay.

Mrs. Roukema.

Mrs. ROUKEMA. Thank you, Mr. Chairman.

I thank you for holding these hearings. Today, we revisit legislative efforts to address the serious problems of the dislocated worker in our society.

There is no question but that the economy is in a state of great change, even upheaval, and that this change has caused the unemployment and dislocation of a large number of workers. The jobs of nearly 11 million adults were abolished in the 5 year period between 1981 and 1986. This is according to the Task Force Report from DOL.

There are new plant closings and large lay-offs almost daily. There are ever-increasing numbers of corporate mergers which result in large numbers of lay-offs, and it is no longer just the blue collar worker who is affected by lay-off, but often the white collar worker as well.

As you know, there was an attempt in the 99th Congress to enact legislation which would have required employers to provide notice to certain employees scheduled for a lay-off or termination, and

which would also have required employers to consult with employee representatives regarding alternatives to lay-off and closing.

Because I felt that we did not at that time have sufficient knowledge of either the nature of the problem or of the most workable solutions for dealing with it, I requested that the Secretary of Labor establish a task force to study the issue and report back to the Congress within one year.

We now have the advantage of this Task Force Report on Economic Adjustment and Worker Dislocation. I believe the Task Force has done an outstanding job in outlining the issue before us and suggesting ways to deal with the dislocated worker problem.

The issues, however, of mandatory notification and consultation are still issues of contention and controversy. I appreciate what the panelists will say today in contributing to our understanding of these issues, and I ask, Mr. Chairman, unanimous consent that I could put the full text of my comments into the record at this point.

Mr. MARTINEZ. At this point, let me call the first panel. The first panel consists of the Honorable Angelo R. Martinelli, Mayor of Yonkers, New York, Chairman of the Subcommittee on Employment of the U.S., of the U.S. Conference of Mayors. Is the Honorable Mayor here now? His plane was delayed.

Is Mr. Isiah Turner here?

[No response.]

Let me ask if members of the second panel are here. Owen Bieber?

[No response.]

We will start with the third panel.

Mrs. ROUKEMA. Good. Are you here?

Mr. MARTINEZ. If they are here. Mr. Douglas Soutar, is that right?

Mr. SOUTAR. Soutar.

Mr. MARTINEZ. Soutar. Mr. Douglas Soutar, National Center on Occupational Readjustment. Mr Bruce Johnston, Executive Vice-President, Employee Relations, USX. Mr. Robert Geiger, is it?

Mr. GEIGER. Geiger.

Mr. MARTINEZ. Robert Geiger, Vice-President, Labor Relations, Allied Signal, Incorporated.

Would you please come up? While they are getting adjusted there, let me announce that we will try to keep to the 5 minute rule as much as we can. Your written testimony and written statements, will be introduced in the record in their entirety, and we ask you to summarize, if you will, please, and we will try to hold the panel members to 5 minutes on the questioning period.

With that, we will start with Mr. Soutar.

Mr. SOUTAR. From last to first.

Mr. MARTINEZ. Well, we have done quite a bit of that today already. Just take your time and get adjusted there. We will wait.

Let me introduce a member of the committee, Cass Ballenger, who has just joined us.

Mrs. ROUKEMA. Mr. Chairman, while we are getting organized, I would simply like to point out that Mr. Geiger, and I think I am pronouncing the name correctly, is a resident of New Jersey and a representative of one of our outstanding corporations headquar-

tered in New Jersey, but certainly known worldwide, Allied Signal. We are most appreciative for the contribution that that corporation has made and Mr. Geiger specifically to the operation of the Task Force.

We welcome you here.

Mr. SOUTAR. Well, thank you.

Mr. GEIGER. Thank you.

Mr. MARTINEZ. Are we ready?

Mr. SOUTAR. Yes.

Mr. MARTINEZ. Please proceed.

STATEMENT OF DOUGLAS H. SOUTAR, NATIONAL CENTER ON OCCUPATIONAL READJUSTMENT

Mr. SOUTAR. Mr. Chairman and committee, I am Douglas H. Soutar, Chairman of the Board of Trustees for the National Center on Occupational Readjustment, NACOR.

I am a former senior vice-president of Industrial Relations with ASARCO, the largest non-ferrous mining company of its type, from which I retired in 1984, unlike the text where it says 1985.

I have—those years get precious. I have a good deal of personal experience on the subject of today's hearing and 45 years as a participant in the employee relations arena working with leaders in government, academia and business.

We have testified here before. Mr. John Reed of Cummins Engine Company testified on NACOR's behalf in March of 1985, during consideration of H.R. 1616. The focus of my testimony is the business community's concern about worker readjustment and its commitment to that concern by organizing and supporting NACOR.

I would point out in case I do not get to it that there is an attachment showing the list of the board of trustees of NACOR, and you will see that it is national in scope and includes the major players.

Let me first present some background on what NACOR is and why it was formed. NACOR is a 501C3 educational foundation based in Washington, D.C., and now funded solely by the business community. So, you will not find me lobbying or advocating as I sometimes do.

The center was established in 1983 by concerned leaders of the private employer community. A principal factor leading to NACOR's creation was the dearth of information available to employers, particularly medium and small businesses, to guide them in managing the many issues that arise in work force dislocations.

The second principal factor in NACOR's creation was the strongly-held belief among business leaders that government-mandated solutions, and I emphasize mandated, to employee adjustment problems would not be workable, and that business had an obligation to take the responsibility to advance effective voluntary initiatives. When I say would not be workable, I do not mean the sweeping scope of the new bills but only parts thereof.

Thus, NACOR was formed to promote greater awareness and use of successful programs that employers have been using to assist displaced workers. Because the center was formed by business and is supported by business, it has access to a considerable expertise in

voluntary programs and policies that have helped dislocated workers.

The organization serves as a clearing house and resource center where employers can turn for assistance when faced with a plant closing or significant reduction in force. Until the formation of NACOR, there was neither a single source nor a formal mechanism through which companies facing worker dislocation could gain access to this expertise.

Recognizing the vital role that industry must play in effectively managing economic changes, the Department of Labor provided NACOR with start-up funding by way of a one time 18 month demonstration grant. The grant, which expired in April of 1985, was a partnership endeavor between government and business to demonstrate industry commitment to managing business closings, a quite successful partnership I might add.

The underlying premise of the grant was that business closings were unique, required a variety of responses to assist affected workers. The goal was to identify and communicate the most effective of these responses to companies who could use them. Under the terms of the grant, NACOR was to collect and disseminate information that had been developed voluntarily by business to mitigate the effects of shutdowns. NACOR conducted original case studies, made site visits, consulted with practitioners from federal, state, and local governments, and developed a library of materials regarding all aspects of worker dislocations.

I have already mentioned the business community has continued to demonstrate its commitment to NACOR by funding the center with contributions upon expiration of the DOL grant. NACOR is now solely funded by over 75 companies and private foundations. In fact, we are approaching our third year of self-sustaining operations, and we appear to have new impetus in 1987.

This alone pointedly illustrates that business is concerned about the problem of worker adjustment and is actively doing something about it. The problem of business closings are neither new nor can they reasonably have been expected to vanish given our dynamic economy.

To quote probably the best of the most quoted line in the Brock task force report, "Some business closings and permanent lay-offs are inevitable and can be a concomitant part of achieving and maintaining a competitive healthy economy and a strong position in international marketplace."

Utilizing its information base, in 1984, NACOR published a book entitled "Managing Plant Closings and Occupational Readjustment: An Employer's Guidebook". This guidebook is 238 pages of length. You all have it, and I will not elaborate in order to save time. It is very readable, very concise, and exceptionally well organized, and is written by experts coast to coast. I would hope that you all would take a hard look at it before you get too much further into this subject. More than 2,000 of these guidebooks have been sold or distributed to interested companies, state governors offices, private industry councils, state and local governments, academicians, and business associations. NACOR has developed a variety of services available to companies and other interested parties seeking workable solutions to business closings. The center main-

tains a roster of qualified industrial relations retirees who are available to assist managers on site. NACOR's staff provides guidance and pertinent information when appropriate.

We cite one successful example with a company with which we dealt, Electrolux Corporation. Before and during the 1985 closing of its Greenwich, Connecticut, facility, which happens to be my home, so I am well aware of it, this closure affected approximately 800 blue collar workers and a 50 year old plant, and before they were through utilizing all the resources available, including NACOR's, they were able to successfully place over 80 percent of the total work force.

Attached is a letter of appreciation from the CEO of Electrolux regarding NACOR's role. NACOR staff also was called upon by B.F. Goodrich, a tire group, in 1986 in its Miami, Oklahoma, closure of a large plant; along with some bureaucratic legwork, knowledge we supplied, they were able to place their people reasonably well, but due to high regional unemployment, not as well as Electrolux. NACOR's resource facilities also include such examples as assistance to the Conference Board in the preparation of its survey used to determine the impact of company programs on plant closings; consultation with GAO regarding its questionnaire to survey employers on plant closings; NACOR's critique of a compendium of employer practices compiled by Ohio State, National Center for Research and Vocational Education; and NACOR reviewed and commented on the Office of Technology Assessment's report on early notification of worker readjustment programs. NACOR has also assisted in the development of voluntary guidelines for employers in Maryland, Pennsylvania, Washington, and Connecticut, employers there. These guidelines have been distributed by state manufacturing associations and chambers of commerce.

In addition, NACOR maintains on-going communications with various state legislatures regarding the variety and status of legislative efforts to assist dislocated workers. In the international realm, NACOR is working with leading employer organizations here and in Europe to develop a NACOR model to increase the voluntary effectiveness of employer practices. These are only some examples of NACOR's commitment to work with and communicate positive worker adjustment programs.

Secretary of Labor Brock's task force on economic adjustment strongly recommended in their final report that guidelines which generally describe responsible private sector behavior on a business closing or permanent mass lay-offs should be more widely communicated to employers. Through our guidebooks and its other services, NACOR seeks to do just that. NACOR recognizes that business closings, as unfortunate as they are, are an inevitable part of our economic system. We have published a book entitled "Why Plants Close: Growth Through Economic Transition". This pamphlet briefly summarizes some of the more common reasons for business closings and additionally highlights why closings must be considered unique events. It fits in a pocket and you may wish to carry it around for awhile.

The pamphlet also points out that the critical fact that the U.S. creates far more jobs than are lost, according to BLS, on average, the nation created 2 million jobs per year since 1976. In other

words, despite plant closings, for the past 5 years or more, the U.S. created twice those lost. In contrast, Western Europe, where legal barriers severely restrict the ability of businesses to close or relocate, experienced a net decrease of the better part of a million jobs between 1973 and 1983.

As well, NACOR is engaged in a considerable amount of research. Currently, we just finished last—end of last year, a book entitled "Regulating Plant Closings and Mass Lay-offs: A Summary of Foreign Requirements", which goes into the legislative requirements, primarily in Europe, but also in two or three other countries, such as Sweden and Japan.

A little more than a year ago, the Department of Labor in cooperation with the National Governors Association announced a pilot project to test the concept of the Canadian IAS in six states. At the same time, NACOR commissioned the preparation of a critique of the Canadian IAS and a copy of that has been attached for your information. It is hot off the press and is the most current survey available.

I will not describe the Canadian IAS because you have heard that before and will again. We have some conclusions which we have drawn from this study. Overall, the functioning of the IAS received a favorable response by the surveyed employers who had used it. However, the authors conclude that the IAS probably does not effectively serve small employers or unorganized work forces simply because they do not use the IAS.

Further, as a practical matter, only about 5 percent of Canadian employers are covered by the federal requirements, representing minimum standards. Results of the employers survey indicate that if cooperation with the IAS were made mandatory, employers would be far less inclined to view it favorably.

Interestingly, it appears that it is the voluntary nature of the program and last but not least the ability of the IAS to persuade employers to accept its services that serves as a catalyst for its effectiveness.

NACOR proposes further research for 1987 and beyond. For example, we hope to survey in the area to determine to what extent medium and smaller businesses are aware of existing worker adjustment programs, both in the private and in the public sectors. The survey results, once analyzed, will hopefully provide constructive guidance on how communication methods can be improved so that smaller businesses can access effective worker adjustment programs.

Also under consideration for early on projects are development of a data bank to access agencies dealing with worker dislocation and some work in the area of development of guidelines to which employers could certify and be patted on the back by the Secretary of Labor or Governors and so forth.

In conclusion, the decision to close the facility and the manner in which that objective is to be accomplished are highly sensitive matters. Accordingly, employers are generally hesitant to solicit in advance the advice and counsel of government agencies and other outside organizations.

In contrast, NACOR, is an organization directed by a board of trustees of 22 companies and trade associations and provides the kind of atmosphere necessary for free flow of information.

As I noted, a list of NACOR's board of trustees is attached. NACOR's activity is an expression of the business community's concern for the problem of workers caught in declining industries and is an effort to do something about it.

Our studies and publications illustrate the positive steps that employers can and are taking to address this problem, and encourage others to follow their lead. We hope this committee will support our efforts and recognize the distinct advantage of voluntary rather than mandated approach and, this, of course, was the basic premise and theory of the case for the establishment of NACOR in the first place.

This is a paraphrased and abbreviated version of our written testimony. Thank you.

[The prepared statement of Douglas H. Soutar follows:]

TESTIMONY OF DOUGLAS H. SOUTAR

CHAIRMAN OF THE BOARD OF TRUSTEES OF THE

NATIONAL CENTER ON OCCUPATIONAL READJUSTMENT, INC.

BEFORE THE JOINT SUBCOMMITTEES OF

LABOR MANAGEMENT RELATIONS AND EMPLOYMENT OPPORTUNITIES

OF THE HOUSE COMMITTEE ON EDUCATION AND LABOR

ON H.R. 1122 - THE ECONOMIC DISLOCATION AND WORKER ADJUSTMENT ASSISTANCE ACT

MARCH 17, 1987

I am Douglas H. Soutar, Chairman of the Board of Trustees for the National Center on Occupational Readjustment (NaCOR). I am a former Senior Vice President of Industrial Relations with ASARCO, Inc., from which I retired in 1985. I have had a good deal of personal experience on the subject of today's hearings. Mr. John C. Read of Cummins Engine Co. testified on behalf of NaCOR in March of 1985 when these same subcommittees were considering H.R. 1616, The Advance Notification and Consultation Act of 1985. The focus of my testimony is the business community's concern about worker readjustment and its commitment to that concern by organizing and supporting NaCOR.

INTRODUCTION

Let me first present some background on what NaCOR is and why it was formed. NaCOR is a 501(c)(3) educational foundation based in Washington, D.C. and now funded solely by the business community. The Center was established in 1983 by concerned leaders of the private employer community. A principle factor leading to NaCOR's creation was the dearth of information available to employers, particularly medium and small businesses, to guide them in managing the many issues that arise in major work force dislocations.

A second principle factor in NaCOR's creation was a strongly held belief among business leaders that government-mandated solutions to employee adjustment problems would not be workable, and that business had an obligation to take the responsibility to advance effective voluntary initiatives.

Thus, NaCOR was formed to promote greater awareness and use of successful programs that employers have been using to assist displaced workers. Because the Center was formed by business and is supported by

business, it has access to considerable expertise in voluntary programs and policies that have helped dislocated workers. The organization serves as a clearinghouse and resource center where employers can turn for assistance when faced with a plant closing or significant reduction in force. Until the formation of NaCOR, there was neither a single source nor a formal mechanism through which companies faced with worker dislocations could gain access to this expertise.

Recognizing the vital role industry must play in effectively managing economic change, the U.S. Department of Labor provided NaCOR with start-up funding by way of a one-time 18-month demonstration grant. The grant, which expired in April 1985, was a partnership endeavor between the government and business to demonstrate industry's commitment to managing business closings. The underlying premise of the grant was that business closings were unique events that required a variety of responses to assist affected workers. The goal was to identify and communicate the most effective of these responses to companies who could use them.

Under the terms of the grant, NaCOR was to collect and disseminate information on sound, practical methods that have been developed voluntarily by business to mitigate the effects of plant shutdowns. NaCOR conducted original case studies, made site visits, consulted with practitioners from federal, state and local governments and developed a library of materials regarding all aspects of worker dislocation.

As already mentioned, the business community has continued to demonstrate its commitment to NaCOR's important goals by funding the Center with company contributions upon expiration of the Department of Labor grant.

ONGOING BUSINESS SUPPORT

NaCOR is now solely funded by over 75 companies and private foundations. In fact, we are approaching our third year of self-sustaining operations. This alone pointedly illustrates that business is concerned about the problem of worker adjustment and is actively doing something about it. The problems of business closings are neither new nor can they reasonably be expected to vanish given the dynamic economy. The Task Force on Economic Adjustment and Worker Dislocation, established by Secretary of Labor Brock in November 1985, reports that "some business closings and permanent layoffs are inevitable and can be a concomitant part of achieving and maintaining a competitive, healthy economy and a strong position in the international marketplace."

COMPREHENSIVE GUIDANCE

Utilizing its information base, in 1984 NaCOR published Managing Plant Closings and Occupational Readjustment: An Employer's Guidebook. The Guidebook represents 238-pages of 'never-made-available-before' information. It is a thorough and easily readable examination of successful planning and program options available to managers facing a work force reduction of business closing. Managing Plant Closings and Occupational Readjustment: An Employer's Guidebook is comprehensive, perhaps to the point of providing more information than an employer may ever need. This is because NaCOR recognizes that each plant closing is unique, with its own set of contributing factors. Our experience shows that there can be no single "best" approach that can be applied in individual closing situations. Rather, the Guidebook presents a range of options to help the user reach decisions that will be in the best interest of all parties involved. For example, the Guidebook contains:

- case studies of successful employee readjustment services;
- a cataloque of available federal, state and local assistance programs;
- legal requirements that must be observed;
- internal organizational arrangements designed to facilitate worker assistance initiatives;
- appendices of sample worker assessment questionnaires and communication techniques.

More than 2,000 Guidebooks have been sold or distributed to interested companies (both domestically and abroad), state Governor's offices and Private Industry Councils, state and local governments, academicians, and business associations. We believe that distribution and use of the practical information contained in the Guidebook has helped to mitigate the potentially adverse consequences of many work force dislocations. At the same time, NaCOR recognizes that there is more to be done in communicating this important message.

NACOR SERVICES

NaCOR has developed a variety of services available to companies and other interested parties seeking workable solutions to business closings. For example, the Center maintains a roster of qualified industrial relations retirees who are available to assist managers on-site. NaCOR staff also provides guidance and pertinent information when appropriate.

Thus, NaCOR assistance was enlisted by the Electrolux Corp. -- maker of vacuum cleaners -- before and during the 1985 closing of its Greenwich, Connecticut facility. This closure affected approximately 800 blue-collar workers whose local employment base had been transformed into a predominantly managerial, white-collar work force. Utilizing NaCOR's services as well as assistance provided by the Department of Labor, Electrolux was able to successfully place over 80% of its total work force. Attached is

a letter of appreciation from the Chairman and Chief Executive Officer of Electrolux regarding NaCOR's role in this successful worker adjustment effort.

NaCOR staff was also called upon by the BFGoodrich Tire Group to provide technical assistance during their 1986 Miami, Oklahoma closure. A little knowledge coupled with some bureaucratic legwork enabled the company to obtain financial resources for employee outplacement efforts. And although the placement rate was not as good as in the Electrolux case -- primarily a result of high regional unemployment -- Goodrich employees, through the company's efforts, were given maximum assistance in seeking reemployment.

NaCOR's research facilities were also accessed by other research organizations. Examples include:

- NaCOR assisted the Conference Board in preparation of its survey used to determine the impact of company programs in plant closing situations;
- NaCOR was consulted by the General Accounting Office regarding its questionnaire to survey employers on plant closings;
- NaCOR critiqued a compendium of employer practices compiled by the Ohio State University's National Center for Research in Vocational Education;
- NaCOR reviewed and commented on the Office of Technology Assessment's report on early notification and worker readjustment programs.

NaCOR also assisted in the development of voluntary guidelines for employers in the states of Maryland, Pennsylvania, Washington and Connecticut. These guidelines have been distributed by state manufacturing associations and chambers of commerce. In addition, NaCOR maintains ongoing communications with various state legislatures regarding the variety and status of legislative efforts to assist dislocated workers.

These are just some examples of NaCOR's commitment to work with and communicate positive worker adjustment programs. These voluntary employer initiatives are good examples of the dedication many companies and employer groups have to construct thoughtful and effective plant closing programs.

Secretary of Labor Brock's Task Force on Economic Adjustment and Worker Dislocation strongly recommended in their Final Report that "guidelines which generally describe responsible private sector behavior on a business closing or permanent mass layoff should be more widely communicated to employers." Through the Guidebook and its other services, NaCOR seeks to do just that.

OTHER RESEARCH AND INFORMATION

NaCOR recognizes that business closings, as unfortunate as they are for those who lose their jobs, are nevertheless an inevitable part of our economic system. Business closings occur for a variety of important but frequently misunderstood reasons. In 1986 NaCOR published Why Plants Close: Growth Through Economic Transition. This pamphlet briefly summarizes some of the more common reasons for business closings and, additionally, highlights why closings must be considered unique events. The pamphlet also points out the critical fact that the U.S. creates far more jobs than it has lost. According to recent Bureau of Labor Statistics data, on average the nation created approximately 2 million jobs per year since 1976. In other words, despite plant closings, for the past 5 years or more, the U.S. created twice those lost. In contrast, the nations of Western Europe -- where legal barriers severely restrict the ability of businesses to close or relocate facilities -- experienced a net decrease of 840,000 jobs between 1973 and 1983.

RECENT NACOR RESEARCH

Responding to the general lack of comprehensive data regarding employer requirements in the nations of Western Europe in plant closing situations, NaCOR published in 1986 Regulating Plant Closings and Mass Layoffs: A Summary of Foreign Requirements. The 130-page book outlines collective dismissal and individual termination regulations currently enforced in European Community member states as well as Sweden and Japan.

A little more than a year ago, the Department of Labor, in cooperation with the National Governor's Association announced a pilot project to test the concept of the Canadian Industrial Adjustment Service (IAS) in six states. At the same time, NaCOR commissioned the preparation of an objective critique of the Canadian IAS. A copy of the NaCOR study, entitled Business Closings and Worker Redjustment: The Canadian Approach is attached for your information.

Briefly, the Canadian Industrial Adjustment Service is a federal program with offices located throughout the provinces. Established in 1963 as the Manpower Consultative Service, the IAS attempts to ensure the rapid delivery of federal, state and local assistance to business concerns experiencing economic difficulties.

Business Closings and Worker Readjustment: The Canadian Approach is divided into four sections. In capsule they include:

- a review of Canadian federal and provincial legislation;
- a review of some of the legal issues which have arisen under Canadian plant closing laws;
- a summary of the Industrial Adjustment Service;
- results of an employer opinion survey conducted by the study authors.

Overall, the functioning of the IAS received a favorable response by the surveyed employers who had used it. However, the authors conclude that the IAS probably does not effectively serve small employers or unorganized workforces, simply because they do not use the IAS. Results of the employer survey indicate that if cooperation with the IAS were made mandatory, employers would be far less inclined to view it favorably. Interestingly, it appears it is the voluntary nature of the program that serves as a catalyst for its effectiveness.

PROPOSED NACOR RESEARCH

As mentioned earlier in my testimony, one of the principle factors in NaCOR's creation was the need to get information concerning effective worker adjustment methods to medium and small businesses. Despite our efforts to date, everyone will agree that more can be done to communicate this important message to these employers.

Accordingly, NaCOR hopes to conduct a survey in the near future that will be directed to these very employers. The basic thrust of the survey will be to determine to what extent medium and smaller businesses are aware of existing worker adjustment programs, both in the private and in the public sectors. The survey results, once analyzed, will hopefully provide constructive guidance on how communication methods can be improved so that smaller businesses can access effective worker adjustment programs.

CONCLUSION

The decision to close a facility and the manner in which that objective is to be accomplished are highly sensitive matters. Accordingly, employers are generally hesitant to solicit in advance the advice and counsel of government agencies and other outside organizations.

NaCOR, in contrast, is an organization directed by a Board of Trustees of 22 companies and trade associations and provides the kind of atmosphere necessary for a free flow of information. A list of the NaCOR Board of Trustees is attached for your information.

NaCOR's activity is an expression of the business community's concern for the problem of workers caught in declining industries and is an effort to do something about it. Our studies and publications illustrate the positive steps that employers can and are taking to address this problem, and encourage others to follow their lead. We hope this committee will support our efforts and recognize the distinct advantage of a voluntary, rather than mandated approach.

ELECTROLUX

ELECTROLUX CORPORATION
[illegible] SUMMER STREET • STAMFORD, CONNECTICUT [illegible]
TELEPHONE [illegible]

July 25, 1986

Mr. Douglas Soutar, Chairman
NACOR
1776 "F" Street, N.W.
Washington, D.C. 20006

Dear Mr. Soutar:

Many thanks for all the help and guidance you and your staff have provided to us during our Old Greenwich Plant Closing this year. The input from NACOR has been important to us in developing the best possible reemployment program for our employees.

Your guidebook provided effective advice in planning, organizing and implementing the closure. We are proud to note that the program Electrolux developed has been highly praised on the Federal, State and local level. Your contribution helped make that recognition possible.

Once again, we very much appreciate all of your efforts on behalf of our employees.

Yours very truly,

C. Steven McMillan

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BUSINESS CLOSINGS

and

WORKER READJUSTMENT

*****

The Canadian Approach

David G. Newman, Esq.
William Gardner, Esq.

The National Center on Occupational Readjustment, Inc.
March 1987

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BUSINESS CLOSINGS

and

WORKER READJUSTMENT

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The Canadian Approach

David G. Newman, Esq.
William Gardner, Esq.

The National Center on Occupational Readjustment, Inc.
1987

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The National Center on Occupational Readjustment (NaCOR) is a 501(c)(3) nonprofit foundation established in 1983 by business executives concerned with the impact of plant closings on workers and the communities in which they live. NaCOR's primary purpose is to serve as a national clearinghouse and research center where employers confronted with plant closings or major layoffs can turn for assistance in easing the adverse effects of such events.

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INTRODUCTION

Preface

Last March, the Board of Trustees of the National Center on Occupational Readjustment (NaCOR) approved a proposed research project designed to analyze the experience of Canada in dealing with business closings and mass layoffs. The project was given the go ahead primarily because of the increased attention that U.S. policy makers have been giving to worker adjustment initiatives taken by the federal and provincial governments of our neighbor to the north. There was also a concern that much of the existing literature concerning the Canadian experience was self-serving, that is prepared by Canadian government officials, or was anecdotal rather than comprehensive.

Several recent developments in the U.S. bear out the NaCOR Board's good judgment that a comprehensive summary of the Canadian experience was needed. For example, in March 1986 the U.S. Department of Labor, in conjunction with the National Governor's Association, launched a one-year demonstration project to establish a Canadian-style industrial adjustment service in six states. (A description of the Canadian program is provided in Section III of this report.) It is interesting to note that while only six states were chosen to participate in the demonstration project, 35 Governors expressed an interest to the Secretary of Labor. The preliminary results of the project are due to be released January 1988.

In another recent development, the Secretary of Labor's "Task Force on Economic Adjustment and Worker Dislocation" released its final report this January. The Task Force had been created by Labor Secretary Brock in October 1985 to prepare a comprehensive report on the issue of worker dislocation and to come up with recommendations for solutions to the problem. The Task Force Report observed that "the quick response capability of the 25-year-old Canadian Industrial Adjustment Service (IAS) appeared to offer the highest degree of replicability for the United States."

Finally, the 100th Congress has already started considering major legislative proposals designed to address the issue of worker adjustment. For example, Representative Jim Jeffords, the ranking minority member on the House Education and Labor Committee, has introduced a bill (H.R. 728) to implement a worker readjustment service modeled after the Canadian IAS. Other similar proposals are expected to be introduced. All of the developments just discussed make publication of Business Closings and Worker Readjustment: The Canadian Approach at this time particularly appropriate.

In approving the project, the NaCOR Board believed that if government officials in the U.S. were going to seriously consider Canada as a possible model for domestic responses to worker adjustment problems, it would be useful to the debate to provide a detailed and, hopefully, objective summary of Canadian government efforts with respect to these issues. The Board believed this could best be accomplished by having the study prepared by someone directly familiar with Canada's experience who was not a member of the government.

This study was prepared by David G. Newman, Esq., a partner with the firm of Pitblado and Hoskin in Winnipeg, Manitoba. Mr. Newman was assisted in its preparation by William S. Gardner, Esq. The opinions and conclusions expressed are those of the authors' and are neither specifically endorsed nor rejected by NaCOR. Nevertheless, NaCOR believes that the study has accomplished its purpose in that it provides a good overview of how Canada has responded to the issue of worker adjustment, from a Canadian perspective.

The study is organized into four major sections.

Section I provides a description of plant closing legislation in Canada, including a description of both federal and provincial requirements that are currently in effect. The section also briefly explains the federal/provincial government relationship, which is quite different than the federal/state government relationship in the U.S.

Section II summarizes legal issues which have arisen under Canadian plant closing legislation, and how the Canadian courts have resolved these issues to date. These issues include distinguishing between layoff and termination, the definition of establishment and calculating the number of employees needed to trigger advance notice requirements. The cases discussed suggest that issues relating to worker adjustment have proven to be exceedingly complex.

Section III describes the Canadian Industrial Adjustment Service, formerly known as the Manpower Consultative Service. The IAS program, which is largely voluntary, is available to assist employers in their efforts to find new work for employees who have been dislocated due to plant closings or permanent layoffs. The authors conclude that it has been used most frequently in a large employer, unionized setting. The IAS is the Canadian program most often cited as a possible model for duplication in the U.S.

Section IV surveys employer opinion concerning the business community's experience with the IAS, based largely on responses given to a survey which was sent by the authors to companies that had actually used the IAS. Interestingly, while giving the service high marks for acceptance, the surveyed employers were less persuaded that it was actually effective in meeting its intended purpose. The survey results are clearly useful in assessing how employers have rated the effectiveness of the IAS from a real world perspective.

The study also includes several informative Appendices, including a comparative chart of plant closing legislation in various Canadian jurisdictions and a directory of national and regional offices of the IAS.

Questions or comments regarding the study should be directed to the National Center on Occupational Readjustment, 1331 Pennsylvania Avenue, NW, Suite 1500, North Office Lobby, Washington, DC 20004-1703.

Gretchen E. Erhardt
Director
NaCOR

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I. DEVELOPMENT OF PLANT CLOSING LEGISLATION IN CANADA

A. History

The first legislation affecting group terminations was enacted in the province of Ontario in 1970 in conjunction with major amendments to its Employment Standards Act. The new provisions included the requirement to give periods of notice depending upon length of service in cases of individual terminations. In the case of termination of employment of 50 or more persons in any period of four weeks or less, notice periods were required on an ascending scale depending on the number of employees involved. Employers with fewer than 50 employees were not covered.

The Ontario legislation also introduced for the first time the requirement that covered employers must notify and cooperate with the Provincial Minister of Labour in connection with any action or program intended to adjust the employees who were displaced.

The legislation was motivated largely by a concern as to the capacity of the economy to accommodate a large number of employees reentering the job market at one time. A further concern was the fact that once their employment was terminated, employees tended to disperse, making it more difficult to assist them in a coordinated fashion. Finally, policy makers believed that by requiring employers to give advance notice, or pay in lieu thereof, the periods during which employees were in receipt of social assistance, such as unemployment insurance or welfare, would be reduced. Thus, the theory went, government and society would save money.

The federal government followed close upon the heels of the Ontario legislature with amendments to the Canada Labour Code in 1971. The federal provisions were very similar to the Ontario model.

Similar legislation was enacted in the province of Manitoba in 1972. During the debates respecting the Manitoba bills some sentiments were expressed which presaged the continuing impetus for legislation in that province to further restrict the right of a company's management to manage the size and composition of its work force. For example, a member of the majority party stated the following in support of the measure:

> "And I don't think [we] would want to say that this legislation expresses the belief of this government that it recognizes that it is management that has the right to layoff employees at will, but rather this could be a matter of...saying we want more time notification but we won't allow layoffs, or we want to have proof that layoffs are required by opening the books, or some other provision which would take away the kind of dictatorship on the part of management who would have the right on its own without any provision of proof to the labour force that such layoff is necessary without having to refer to any other authority, any other body, including its labour force, (management) has the right to cast aside at will."

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The lead taken by the provinces of Ontario and Manitoba and the federal government was followed over the ensuing years by other regions. Currently group termination provisions exist in six provincial jurisdictions and the Yukon Territory as well as the federal standards. (See Appendix I for a reference chart of plant closing legislation across Canada.)

B. Federal/Provincial Regulation

Before discussing the specific provisions of the group termination provisions of the federal Canada Labour Code and those of the provinces where such requirements exist, it is important to provide some explanation as to the relationship between the federal and provincial governments.

Federal requirements apply directly only to a small percentage of Canadian employers, primarily those businesses which contract directly with the Canadian government, and certain industries which are specifically subject to federal jurisdiction, such as banking, transportation and shipping. As a practical matter, only about five percent of Canadian employers are covered by federal requirements. All other employers are directly subject to provincial jurisdiction.

The federal protections thus tend to serve as minimum standards to serve workers who would not otherwise be protected by provincial legislation.

C. Federal Legislation

The current provisions contained in the Canada Labour Code respecting group termination of employment are more comprehensive than any jurisdiction in Canada. The Code provides that where 50 or more employees in an industrial establishment are terminated within a period of four weeks or less the employer must give notice of at least 16 weeks prior to the effective date of the termination. There is no ascending scale as is common in most other jurisdictions. Under certain circumstances as prescribed in the implementing regulations, the 16 weeks notice provision may be triggered by the termination of a lesser number than 50 employees.

Notice must also be given to the federal Minister of Employment and Immigration, the Canada Employment and Immigration Commission, representatives of the employees, if any and the employees. The notice must contain information as to the planned termination date of the employees or, in the case of a staggered termination, the planned dates for each individual, the estimated number of employees in each occupational classification whose employment is to be terminated and other information as may be prescribed in the regulations.

The employer is required to cooperate with the Canada Employment and Immigration Commission by giving any information requested by the Commission for the purpose of assisting displaced employees. In addition, the employer must give the employees a statement setting out the vacation benefits, wages, severance pay and any other benefits and pay to which they are entitled arising from the employment or termination of that employment.

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The employer is also required to participate in the establishment of a "Joint Planning Committee" and cooperate with the committee in its efforts to adjust employees. A Joint Planning Committee is comprised of equal representatives of business, labor and public agencies.

A unique aspect of the federal Code is a provision for arbitration of disputes arising out of the operation of the Joint Planning Committee. The Code stipulates that upon the unanimous application of the committee members representing one or the other party the Federal Labour Minister may appoint an arbitrator to assist in developing an adjustment program and resolving matters in dispute respecting it. A statement of the matters in dispute is prepared by the Minister and sent to the arbitrator and to members of the Joint Planning Committee. The issues contained in the statement are expressly restricted to those matters which might normally be the subject of collective agreement negotiations in connection with termination of employment. The arbitrator is excluded expressly from reviewing the decision by the employer to terminate or from delaying the date of termination assuming it is otherwise in accordance with the provisions of the Code. To date, there have only been four references to arbitration pursuant to this section.

In addition to the requirement to give notice under the group termination provisions, an employer is also required to give severance pay to employees who have been employed continuously for at least 12 months, amounting to the greater of two days' wages per year of employment or five days' wages.

An employer is exempt from the group termination requirements with respect to the termination of seasonal and casual employees. Employers may also be exempted by the Governor General-In-Council (the executive branch) or by the Labour Minister, either of whom may waive the notice provisions if it is established they are prejudicial to the interests of the employer or the employees. The Labour Minister may grant pay in lieu of notice upon petition by the employer.

If employees are represented by a union, the parties may expressly contract out of the group notice provisions if the collective bargaining agreement contains terms which specify procedures by which matters relating to the termination of employees may be negotiated and settled. Terminations as a result of technological change may also be exempted from the group notice provisions.

D. Provincial Legislation

Before discussing the individual provincial requirements regarding group terminations, it is important to note that pay in lieu of notice may be granted by the provincial Labour Minister. All of the following provincial regulations, except Quebec and the Yukon Territory, include an entitlement allowing the employer to petition the Minister for pay in lieu of notice.

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Ontario. The group termination provisions contained in the Employment Standards Act of Ontario are very similar to those originally enacted in 1970. An employer who terminates the employment of 50 or more employees within a four-week period is obliged to give eight weeks notice for a termination of between 50 and 199 employees, 12 weeks for 200 to 499 employees, and 16 weeks if 500 or more employees are dismissed.

A layoff is not considered to be a termination if it is "temporary," that is for a duration of not more than 13 weeks within a period of 20 consecutive weeks. An otherwise covered layoff may be for a longer duration if the employee continues to receive severance pay from the employer or the employer makes contributions to a pension, insurance or supplementary unemployment plan in favor of the employee.

The employer is required to cooperate with the provincial Labour Minister in connection with efforts to establish the employees in other employment by participating in actions or measures as directed by the Minister, by joining with the government in establishing and operating a "Joint Planning Committee," and by contributing to the reasonable cost or expense of such a committee. Notwithstanding this requirement, which is similar to the provision contained in the federal Code, the Minister of Labour in Ontario has never exercised his discretion to require employers to participate in the work of a Joint Planning Committee.

Although the group notice periods contained in The Employment Standards Act are not cumulative, it provides for severance pay triggered by the termination in a particular establishment of 50 or more employees within a period of six months. The requirement to give severance pay is in addition to the requirement to give notice and applies notwithstanding the possibility that many employees may find other jobs almost immediately.

Exceptions to the notice provisions include an employee who is employed for a definite term or task, is temporarily laid off as defined in the implementing regulations or who has been guilty of willful misconduct or neglect of duty. Circumstances involving "unforeseen frustration of contract" are exempt unless the circumstances involve an order under the provincial Environmental Protection Act. Finally, an entire industry can be specifically exempted by the regulations. For example, employers engaged in ship building have been exempted. The regulations also exclude situations where the layoff or termination is a result of a strike or lock-out at the place of employment and where an employee refuses an offer by his employer of reasonable alternative employment. Casual employees and employees engaged in the construction industry are also not entitled to the beneifts of the notice provisions.

Severance pay is not applicable if the employee receives supplemental unemployment benefits or if a collective bargaining agreement provides severance pay based on length of service. In addition, employees are not eligible for severance pay if employed less than five years. By inference, severance pay provisions provided contractually may prevail even if they are not as generous as the Employment Standards Act. An employee who is entitled to receive severance pay and who also holds recall rights must elect one or the other. If he elects severance pay, any rights to recall are extinguished. If he elects to maintain recall rights or makes no election, severance pay is sent in trust to the

provincial Director of Employment Standards. The severance pay provisions do not apply to employees who refuse an offer of reasonable alternative employment with the employer or who, upon termination, are "retired" and receive an actuarially unreduced pension benefit. Casual and construction employees are also excluded from the application of the severance pay provisions.

A further exception, which is unique, provides that the group termination provisions do not apply where the termination of 50 or more employees does not constitute more than 10 percent of the work force, unless the termination is caused by the permanent discontinuance of all or part of the business of the employer at the establishment. Employees with less than three months service are not covered.

The Act also confers jurisdiction upon a Refereee to determine that "an act, agreement, arrangement or scheme is intended to have or has the effect, directly or indirectly, of defeating the true and intent purpose of this Act and the regulations." This jurisdiction may be exercised in determining questions regarding the applicability of group notice provisions or an employer's liability to pay severance pay notwithstanding that the termination technically does not trigger either provision. If the Referee makes a positive determination he is authorized to "direct an order requiring such person to cease and desist...and order what action...shall (be taken) or (refrained from) in order to comply with (the Act)."

Manitoba. In Manitoba, if an employer terminates the employment of a minimum of 50 or more employees in a particular industrial establishment within a period of four weeks, the requirements for notice are: 10 weeks in the event of termination of 50 to 100 employees; 14 weeks for 101 to 299 employees; 18 weeks if 300 or more employees are dismissed. A layoff is not considered a termination if it is in accordance with custom or practice in a seasonal industry or the term is eight weeks or less in a period of 16 consecutive weeks. An otherwise covered layoff may be longer if the employee continues to receive wages or payments from the employer or the employer continues to make payments for the benefit of the employee to a pension plan or group insurance plan.

The information to be contained in the notice is similar to the federal requirement with two conspicuous additions. The employer is required to give the reasons for termination and to give the names of two persons to act as the employer's representatives on a Joint Planning Committee, which must be established if directed by the provincial Labour Minister.

The employer is required to cooperate with the provincial Minister of Labour in any action or program aimed at facilitating the reemployment of the displaced employees. This includes participating on a Joint Planning Committee if required to do so by the Labour Minister. Employee representatives are appointed by the bargaining agent if applicable. If not, they are chosen by election of the employees, with the assistance of the employer. The stated purpose of such assistance is to facilitate "the election of persons to represent the views of the affected employees." There is provision for cochairpersons representing each party.

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The law mandated the Joint Planning Committee first to develop an adjustment program designed to eliminate the necessity for termination or failing that, to minimize the impact of such termination upon the affected employees. In an apparently direct reference to the provisions contained in the federal legislation dealing with the same subject, the Joint Planning Committee is expressly authorized to deal with all matters relevant to its object and mandate and is expressly not limited to dealing only with such matters as are normally the subject matter of collective bargaining in relation to termination of employment.

The Manitoba exceptions include employment for a definite term or task, layoff as opposed to termination, willful misconduct or neglect of duty and frustration or refusal of a reasonable employment offer. Casual employees, those engaged in a strike or lockout or employed in the construction industry are also not entitled to notice. An individual who, upon termination, is "retired" may not be entitled to the benefits of notice. If the employer establishes that the employee has reached the age of retirement according to established practice, then the employer is no longer obligated under the law except insofar as it is otherwise liable to the employee under applicable pension provisions.

Quebec. In Quebec, an employer is obliged to give: two months notice where the employment of between 10 and 99 employees is terminated; three months where 100 to 299 employees are terminated; and four months in the case of termination of 300 or more employees. Unlike most other Canadian jurisdictions, there is no equivalent to the usual four week period within which the terminations must be effected in order to trigger the provisions. There is a mandatory stipulation for establishment of a Joint Planning Committee with financial support from the employer.

Notice provisions do not apply where employees are assigned work of a seasonal or intermittent nature or are dismissed indefintely for a period of less than six months, or are engaged in a strike or lockout. A unique provision stipulates that if an employer is unable to give the required notice due to an unforeseeable event and the employer further establishes that he was unable to foresee a collective dismissal, the provincial Labour Minister may only require the employer to give notice "as soon as possible."

Nova Scotia. Nova Scotia requires: eight weeks notice in case of termination of employment within an establishment of between 10 and 99 employees; 12 weeks for 100 to 299 terminations; 16 weeks in the event of the termination of employment of 300 or more employees. A layoff is not a dismissal if it is for six days or less. The notice must be given to the employees affected and to the provincial Labour Minister. There is no requirement for participation in the establishment and function of a Joint Planning Committee.

The notice provisions are not applicable to a person who is employed for a definite term or task, is terminated for a reason beyond the control of the employer, has refused reasonable alternative employment, is engaged in the construction industry or is employed in an occupation exempted by regulation.

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Newfoundland. In Newfoundland, an employer who terminates the employment of 50 or more employees within a four week period is required to give: eight weeks notice where the number of employees is less than 200; 12 weeks notice for 200 to 499 employees; and 16 weeks notice where 500 or more are dismissed. A layoff is not a termination if it is of one week or less duration. Payment in lieu of notice includes regular wages and customary or regular overtime. Notice is required to be given to the employees and to the provincial Labour Minister and the information contained in the notice must include the reason for the terminations. Newfoundland law contains most of the exemptions also contained in the other provincial statutes.

New Brunswick. New Brunswick requires four weeks notice of termination in the event more than 25 employees (or at least 25% of the work force) are terminated within a four week period. Interestingly, the provisions are only effective if the employees are covered by a collective bargaining agreement. Notice must be given to the employees affected, the provincial Labour Minister and the bargaining agent.

The notice requirements do not apply where the layoff results due to an unforeseen lack of work or otherwise does not exceed six days. Employment for a definite term or task or in construction of seasonal occupations, does not qualify. Employees who are retired pursuant to a bona fide retirement plan are not entitled to notice.

Yukon. In the Yukon Territory, notice of group terminations is required where an employer terminates 25 employees or more within a four week period. In the case of terminations numbering between 25 and 49 employees, the notice required is five weeks. Where 50 to 99 employees are terminated, nine weeks notice is required. For 100 to 299 employees terminated, 13 weeks notice is to be given and 17 weeks notice is required in the cases of 300 or more employees. Identical notice is required in the event of temporary layoff.

The notice provisions do not apply to seasonal or construction industry employment. Further exceptions include termination due to frustration, refusal of alternate employment, or discharge for cause. If temporary layoff does not exceed the period prescribed in the regulations, notice need not be given.

Other Provinces and Territories. British Columbia, Alberta, Saskatchewan, Prince Edward Island and the Northwest Territories do not presently have group termination laws. Government officials from Alberta and Saskatchewan have commented that, in their opinion, there does not seem to be such need, or demand, for such provisions.

II. LEGAL ISSUES

A. Introduction

Since enactment of group termination legislation in various Canadian jurisdictions, several significant legal issues have arisen which have been addressed by the courts. The following is a summary of some of the more important interpretations which have developed out of these court cases. Most of the decisions discussed involve the Ontario Employment

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Standards Act, which as mentioned earlier is the first of the provincial group termination laws enacted. Precedents established by the Ontario courts will likely be given serious consideration as similar issues are litigated in other jurisdictions.

B. Lay-Off versus Termination

Whether a lay-off constitutes a termination as contemplated in the group notice provisions has occupied the attention of tribunals and the courts in several jurisdictions on a number of occasions.

For example, in Falconbridge Nickel Mines v. Simmons and United Steel Workers of America and Sudbury Mine, Metal and Smelter Workers Union, Local 598,[6] the Ontario High Court of Justice considered a Referee's decision that an indefinite lay-off of employees by Falconbridge constituted a permanent discontinuance, thereby triggering notice requirements of 16 weeks. On Application for Judicial Review by the employer, the court declared that no evidence had been tendered to indicate that the company intended the discontinuance to be permanent. Therefore the Referee was without jurisdiction to conclude that it was permanent and his order was quashed. (See Appendix 2 for this and subsequent case citations).

C. Discontinuance and Transfer of Operations

The issue of whether operations transferred from one facility to another constituted a termination was considered in Re: Telegram Publishing Co. Ltd.,[7] where a Referee was appointed pursuant to the provisions of the Employment Standards Act of Ontario. Here, the specific issue dealt with whether individuals terminated by the Toronto Telegram who were subsequently employed by the Toronto Star should be considered terminated due to a permanent discontinuance of operations.

The Telegram argued that these employees should be treated as having had their employment continued since certain assets and lists of subscribers were sold by the Telegram to the Star. This argument was rejected by the Referee because the transfer of assets was too minor to be considered as constituting the sale and continuance of the business. The decision of the Referee was the subject of an Application for Judicial Review brought by the employer before the Ontario Divisional Court. The court dismissed the Application and adopted the Referee's decision.

In Re: Dylex Limited and Amalgamated Clothing and Textile Workers Union,[8] the Referee, also appointed under the provisions of the Ontario Employment Standards Act, was called upon to consider the effect of a permanent discontinuance at one location of an employer and a continuation of that operation at a different location. The Referee referred to an earlier decision under the Employment Standards Act, Re: Agincourt Motor Hotel,[9] and determined that the group notice and severance provisions contained in the Employment Standards Act had to be interpreted on the basis of reading the Act as a whole in light of the mischief sought to be cured by the legislature. He ruled that in the case of group terminations, the mischief sought to be cured was the loss of employment suffered by individuals arising from the cessation of business at an establishment. In his opinion, the provisions made no reference to continuation of the business in some other location or to how the cessation was brought about. Therefore, citing the Agincourt case, it made no

difference whether the business was continued by a third party at another location. The Referee held that the continuation of the same business at a different location by the same employer did not eliminate the possibility of application of the severance pay provisions.

In the wake of the Falconbridge case, the regulations in Ontario were amended to provide that notice of an indefinite layoff would be deemed to be notice of termination of employment. That regulation was applied by the Referee in the case of Re: Ontario Hydro and Ontario Employees Union Local 1000.[5] In that case the indefinite layoff of 64 employees engaged in a training program was found to be a termination as contemplated by the group termination provisions of the Employment Standards Act.

D. Meaning of "Establishment"

The interpretation of the term "establishment" as it pertains to the group or severance pay provisions in Canadian law causes little difficulty when there is only one work location involved. However, the effect of interpreting one or more locations to be either separate establishments or separate facilities constituting one establishment can often make a great deal of difference as to whether group notice or severance pay is required.

It appears that in interpreting the term establishment Referees and the courts have been guided by the "mischief" doctrine referred to above and have usually managed to interpret the term such that it enhances the benefits available to employees.

In the Telegram Publishing case,[6] the issue involved the status of circulation managers whose employment was terminated as part of the discontinuance of publication. The facts established that circulation managers were distributed among four city and two rural and suburban locations situated a considerable distance from the main publishing facility. Over 1,000 employees were dismissed as a result of the closing at the main facility, so there was little difficulty determining that the maximum group notice provisions applied to employees who worked there. However, there was an insufficient number of circulation managers at each satellite location to trigger the group termination provisions. The Referee decided that the circulation department, though geographically separate from the main operation, was nevertheless an integral part thereof. As a result, the closing of the main publishing facility and the circulation department were deemed to constitute the permanent discontinuance of one establishment.

Exactly the opposite situation confronted the Referee in Dylex.[7] Here the facts revealed that two locations had been operated by the employer. One location (The Lakeshore Plant) had traditionally manufactured men's clothing. The other location (The Weston Location) had at one time been primarily involved with women's clothing, but had started to do men's clothing as well. The employer decided to introduce a more advanced method of manufacturing men's garments to the Weston Plant. Both locations were unionized, with The Lakeshore employees being represented by the Amalgamated Clothing and Textiles Workers Union (ACTWU), and Weston being represented by the International Ladies' Garment Workers Union (ILGWU). The ACTWU successfully grieved the transfer of the advanced men's clothing manufacturing operation to Weston and were found to have jurisdiction over that work. Subsequently, the ACTWU successfully raided the ILGWU at the Weston facility.

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The employer then decided to combine the Lakeshore and Weston operations at one location. Since the Weston facility was more modern, the decision was to close Lakeshore and transfer the work and some of the Lakeshore employees to Weston. ACTWU claimed severance pay under the Employment Standards Act on behalf of employees formerly working at the Lakeshore Plant who did not take jobs at Weston.

The Referee was confronted with a host of issues, including the determination whether the Lakeshore and Weston facilities were each to be considered as an "establishment" pursuant to the severance pay provisions contained in the Employment Standards Act. In contrast to the Telegram situation, if the locations were considered to constitute one establishment, the employees would be denied severance pay because the evidence was clear that there was no permanent discontinuance of operations. In fact, the production simply continued at the new location and even increased over time.

The Referee referred to the Agincourt case[9] and the reference therein to considering the "mischief" sought to be cured by the legislature in enacting the group termination provisions. He also referred to a U.S. State court decision, Liberty Trucking Company v. Department of Industry, Labour and Human Relations et al. That decision set out various factors to consider when determining whether separate plants are one establishment. The factors cited include functional integrality, general unity, and physical proximity. The Referee considered that Dylex had integrated the two operations and that the employees were now represented by the same union and were manufacturing the same products for the same customers. These factors, he said, tended to suggest that the two locations should be considered as one establishment. However, competing considerations, including the fact that the operations had historically been considered separate by both the employer and the respective bargaining agents and the fact that jurisdiction for the advanced method of manufacture of men's garments had been won by the Lakeshore employees and included in the collective agreement were determinative in the case, thus resulting in the conclusion that the locations constituted separate establishments.

E. Triggering Notice and Severance Pay Coverage

Questions have arisen with respect to the inclusion or exclusion of certain employees for purposes of calculating the number of employees who have been terminated to determine application of notice and severance pay. For example, it is clear that certain employees who may not be entitled to severance pay under the Ontario Employment Standards Act are nevertheless to be included for purposes of deciding whether 50 or more employees have been terminated. Employees who have less than five years seniority are not entitled to receive severance pay, but they are included for the purpose of determining whether the severance pay provisions are applicable. Under Canada's various group termination laws, group termination or severance pay provisions do not apply to employees who refuse a reasonable offer of alternative employment. What is not clear is whether such employees are simply denied severance or notice themselves, or whether they should also be excluded from counting for purposes of triggering notice.

In the Dylex case,[10] the count was important because only 43 employees at the Lakeshore facility received outright termination notices. Another 104 employees received an offer of employment at the Weston facility, of which 64 accepted, 30 refused, and the other 10

were ultimately excluded for other reasons. There was no dispute between the parties that if employees receive an offer of reasonable alternative employment with the employer, they would be denied severance pay. However, it was not so clear that employees in this category should be excluded from the count to determine whether the severance pay provisions were triggered for the other employees. Given the wording of the Ontario Employment Standards Act: "where...50 or more employees have their employment terminated by an employer and the...terminations are caused by the permanent discontinuance of all or part of the business of the employer at an establishment," the answer was not readily apparent. Having decided for the purposes of the legislation that the Lakeshore facility was an "establishment," the Referee had to decide whether employees receiving an offer were to be disregarded altogether for the purpose of determining whether a sufficient number of employees had been dismissed, or whether they were merely to be denied severance pay.

First, the Referee decided that the onus of establishing that the benefits available in the Act should be applied to a given situation rested with those asserting such a claim. Therefore, he excluded for the purpose of the count three individuals as to whom there was insufficient evidence to establish their status. Second, he concluded that a finding of separate status for two locations was not necessarily determinative of the issue whether each location should be considered as having a different employer. In this case, he determined that the employer was the same notwithstanding the fact that each was a separate division within the Dylex corporate structure.

Finally, the Referee concluded that the effect of subsections dealing with application or non-application of the severance pay provisions was to exclude certain employees, not only from entitlement to severance pay but also from the body of employees who are to be counted for the purpose of deciding whether the severance pay provisions had been triggered. However, it was still necessary to decide whether the offer was "reasonable" in order to consider whether the employees receiving the offer should be excluded. The Referee listed a number of factors to be taken into account in deciding the reasonableness of an offer. These included a comparison of wage rates, hours of work, nature of the work done, other terms and conditions of employment and the extent to which inconvenience was caused to the employees as a result of the change of work location. In addition, the Referee determined that consideration of the effect upon employee's seniority should be taken into account.

The Referee found that most factors were sufficiently similar between the two locations as to fall within a zone of "reasonableness." However, the facts established that all employees who went from the Lakeshore to the Weston location lost seniority as a result of joining the new bargaining unit. The Referee noted that the particular provisions of the collective bargaining agreement in effect for the Weston location diminished the role of seniority in terms of job security because the emphasis during a reduction of work was upon job sharing rather than layoff of junior employees. He concluded that no single factor could be considered in isolation, and found that the negative factors regarding seniority were insufficient to support a finding that the offer was unreasonable.

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F. Severance Pay Eligibility

Occasionally a question has arisen concerning an employee's entitlement to severance pay if he leaves after the notice of termination is given, but before the effective date of termination. In the Telegram case,[11] the Referee had little difficulty extending severance pay even to individuals who left voluntarily prior to the end of the notice period. The opposite result was reached in Christie Brown and Company Limited v. The Retail Wholesale Bakery and Confectionary Workers, Local Union #650.[12] This case involved an arbitration wherein the union sought to enforce the severance pay provisions provided in the collective agreement which stipulated as follows:

> "Any full time employee, with two (2) years of service or more, whose employment is terminated by the company as a direct result of the closing of the plant shall receive severance pay as follows:..."

The employer planned to close the plant and had given notice of termination. However, some employees did not stay until the effective date of termination and the company refused to pay them severance. A majority of the Arbitration Board decided that the employees who left early were nevertheless entitled to severance pay on the basis that the notice of termination was effectively termination by the company. Upon appeal to the Manitoba Queen's Bench by the employer, the court quashed the decision, ruling that "notice" of termination and actual termination were not the same.

G. Avoidance Versus Evasion

On another matter, the Referee in the Dylex case[13] was called upon to determine whether the employer had constructed an arrangement or scheme intended or having the effect of defeating the true intent and purpose of the Ontario Employment Standards Act. The union argued that the offer of employment made by Dylex was calculated to bring the number of employees actually terminated below 50. The union contended that the offer was not made in good faith and that had all 104 employees accepted the offer the company would have been unable to absorb them. This contention had some justification as difficulties were encountered initially with absorbing even the 63 employees who did accept the offer. Some were sent home for a short period and others had their hours reduced for a while. However, they were all assimilated within a reasonably short period of time and the Referee, while granting that Dylex had carefully planned the closing so as to reduce the number of terminated employees, concluded that the Act invited such arrangements.

Dylex's actions were therefore analogus to "avoidance" in the field of income tax as opposed to being the equivalent of "evasion." Further, the employer was not defeating the intent and purpose of the Act so much as it was carrying out such intent and purpose. The legislation was designed to avert unemployment and by making a reasonable offer of alternate employment the employer was doing just that.

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H. Summary

It is clear upon reviewing the various decisions which pertain to plant closings that it will be some time before the issues will be settled. However, judicial trends are emphasizing the remedial nature of the legislation and interpreting the provisions wherever possible so as to enhance benefits available to employees.

III. INDUSTRIAL ADJUSTMENT SERVICE

A. History

The Industrial Adjustment Services' predecessor, the Manpower Consultative Service (MCS), was established in 1963 by the federal government as one of a number of programs introduced during the 1960s intended to involve the government in planning concerning the Canadian economy and labor market. The MCS was intended initially to participate in the industrial relations community in order to enhance the transfer of labor from declining areas of the economy to expanding ones. The MCS concerned itself with the problems of employees facing termination of employment due to plant closings, technological change or layoffs. In conjunction with the establishment of the MCS, the federal government initiated the Canada Manpower Training Program designed to enhance the mobility of employees. As a member of the Organization for Economic Cooperation and Development, Canada had made a conscious decision to implement an active manpower policy to meet perceived challenges due to technological change and consequential mismatch of skills in the labor force, a labor force also perceived as underdeveloped and undertrained and lacking mobility.

Pursuant to these developments, the government revamped the National Employment Service, expanded the functions of its component agencies and developed new policies and programs related to enhancing the employability of the labor force. The MCS was staffed by civil servants with a background in manpower, training or the personnel field.

The MCS was intended to draw on expertise in the private sector in order to facilitate the adjustment of displaced workers, specifically by contacting employers who were undergoing a shut-down or significant layoff and encouraging the company to join with its employees or their bargaining agent in establishing a tripartite committee known as the Joint Consultative Committee (JCC) for the purpose of formulating a plan to accomplish the adjustment of workers facing displacement. The JCC is comprised of equal numbers of representatives of the employer and employees and chaired by an impartial third party chosen by the committee in consultation with the MCS representative. The function of the JCC is to conduct research and planning with assistance from the MCS representative and, on occasion, from outside consultants with a view to concluding a joint plan to assist the workers in finding new jobs. The committee's costs are shared by the participating parties.

Initially, the MCS operated under Orders-in-Council promulgated by the federal executive branch and was not constituted by formal legislation as such. The name was changed in 1984 at the request of Flora MacDonald, the then Minister of Employment and Immigration, who wished a more neutral term to replace the word "Manpower." As a result the agency was renamed the Industrial Adjustment Service (IAS).

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In the late 1970s the IAS mandate was expanded to cover problems of human resource planning and the recruitment of workers in connection with major industrial developments. During the recession of 1982, the IAS was given responsibility for administering the federal "work sharing" program. This was a scheme introduced by the government as an alternative to laying off a number of employees and retaining the remainder in full-time employment. The work sharing program involved reducing hours of the entire work force and supplementing the income of employees with unemployment insurance benefits. In addition, the IAS encouraged and contributed funds towards the cost of productivity and market studies aimed at enhancing the health and prosperity of enterprise.

In 1985 the Canadian Jobs Strategy was formulated as a successor to the active Manpower Policy, which had been in existence since the 1960s. The Canadian Jobs Strategy involved heavier emphasis on training and incentives for training as a reflection of the federal government's attempt to address the perceived massive structural changes affecting the Canadian economy and forecasts that such changes would continue and intensify. The IAS was given responsibility for the "Community Futures" aspect of the Canadian Jobs Strategy, to be administered on a regional basis by regional managers of the IAS. Community Futures represented an attempt to interface the various government sponsored training programs at the provincial and federal level with the equally numerous planning agencies also established at the provincial and federal level. The rationale was that each of these provincial agencies needed to have some coordination and consultation with federal agencies such as the Canadian Occupational Projection Systems (COPS), which was concerned with attempts to project occupational demands and supply.

However, despite the changes in increased responsibilities, the IAS remains very similar to its predecessor, the MCS, in focusing upon the adjustment of workers displaced due to plant closings, technological change or mass layoffs, through the mechanism of the Joint Consultative Committee.

B. Organization

The IAS is a reactive organization whose involvement depends on its ability to persuade the intended recipients to accept its services. In other words, in most jurisdictions laws requiring employers and employees to accept the services of the IAS either do not exist or are not enforced. The IAS program therefore is largely voluntary and this element of voluntarism is inherent throughout the entire process. Employees are not required to seek or accept assistance from a Joint Consultative Committee and the employer is not obliged to implement its recommenations. It should be noted, however, that in some provinces, such as Quebec and Ontario, the creation of Joint Consultative Committees can be mandated. As a practical matter, employer participation in establishing such committees is much higher than in those provinces where the authority to order creation of a committee does not exist.

Inducement to accept the services of the IAS is provided by financial incentives. These incentives take the form of cost sharing arrangements to allow assessment, technical advice, consultation and assistance in dealing with the numerous government agencies and programs which have been created for the purpose of providing assistance in a given situation involving displacement of workers.

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Even though it is a federal program, the IAS is available to employers not directly subject to federal jurisdiction. Normally, these would be employers who would be covered by the group termination provisions of provincial laws.

The IAS is administered by a national director headquartered in Ottawa and by regional managers situated in the various provinces. (See Appendix 3 for a list of Regional Offices.) In general, the regional managers are responsible for contact with employers and employees or their representatives. The IAS relies on intelligence gathering or sources from within a particular provincial government to identify possible candidates for using the services of the IAS. Contact is then made with the employer or bargaining agent and discussions commence with a view to organizing a Joint Consultative Committee and concluding a Joint Consultative Agreement.

As a practical matter, the IAS identifies most of its potential clients by operation of the group termination provisions of provincial laws. That is, because emloyers involved in large-scale closings or mass layoffs are required to give advance notice of such closings or layoffs, the IAS is able to identify those employers who may have a need for its services.

Upon initial contact, an IAS industrial consultant will sit down with the parties, outline the programs and services available through the IAS, and seek the parties' acceptance of the IAS services. In some provinces, the equivalent provincial agency may also be involved.

Once agreement in principle has been reached the IAS consultant prepares a document (Joint Consultative Agreement, see Appendix 4), which is intended to detail the objectives, budget and cost sharing aspects of the IAS program. The IAS consultant also may assist the parties in the selection of a chairperson and acts as an advisor to the chairperson and serves as an ex officio member of the Joint Consultative Committee.

The costs of the Joint Consultative Committee are usually shared on a 50-50 basis between the IAS and the employer. In some cases a particular province may contribute a share. For example, in Quebec the division is always one-third, one-third, one-third. Previously, if a bargaining agent for the employees existed, the union was required to contribute to the cost of the Joint Consultative Committee. However, this practice was discontinued in the 1970s and it is not likely the program will be changed again to require the union to provide a share of the funding.

C. Policy

The IAS program originally was premised on the policy of the government that the economic well-being of Canada depended on the effective utilization of manpower. It was believed that market forces left to themselves would not respond quickly enough to changes in technology, economics and the expansion of industries requiring new or different skills.

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In addition, the government was concerned that the British model of resistance to technological advances might be repeated in Canada. It also was believed that the support of organized labor was necessary to avoid social and economic disruption caused as a result of labor resistance to change in the fabric of the economy. Labor support could only be achieved, it was contended, if unions perceived that the process of adjustment was carried out in a fair and equitable manner with their full and equal participation.

The government also believed that advance planning by government agencies might serve to enable business, government and labor to forecast changes and emerging needs for new or different skills in time to be ready when changes actually occurred. Without the support of organized labor and some degree of central government planning, the government was of the view that Canada might not keep pace with developments and improvements elsewhere. Accordingly, an interventionist policy seemed appropriate.

In addition, it was clear that successful adjustment of displaced workers would shorten or eliminate periods of unemployment that might otherwise occur if employers and employees were left to their own devices in dealing with terminations brought about as result of technological or economic change. The IAS was seen as a means of securing financial commitment from the employer so that the costs of displacement would not be borne entirely by society. These employer-supported costs included not only the expense of running the Joint Consultative Committees and financing their operations, but also potentially the cost of training programs, early retirement benefits and so on. As a result the IAS was intended to play a role in reducing financial pressure upon the government's social welfare network.

Finally, the IAS was seen as a means of promoting cooperation and understanding between employers and employees and their representatives. It was believed the joint consultative process would have a salutary effect on labor relations because of its non-adversarial structure. Obviously, this factor would be meaningful only to the extent that the situation did not involve a complete closure. However, in the context of a continuing operation, it was hoped the JCC would establish the basis for a more lasting relationship between the parties and would change the nature of the relationship from an adversarial one, to one that encouraged joint efforts to find solutions in a more peaceful setting. It was believed that if the parties engaged in a process that involved joint input, planning and decision making, more trust and mutual respect would be developed as a result. The IAS and the joint consultative process also could help dissipate worker feelings of alienation and powerlessness in the face of technological change or fluctuations in the economy.

Today, the IAS is seen as a potential contributor to more effective planning for future developments. The problem of labor deployment and redeployment in the face of large scale and often confusing changes to the economic structure of the nation is one which the government believes is best addressed with input from all sectors of society. The Joint Consultative Committees therefore represent a source of research and practical experience which can be drawn upon by the government in order to facilitate its efforts to plan and provide for changes to Canada's mixed economy.

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Currently the IAS is attempting to take a more proactive stance. The passive and reactive nature of the IAS, as it has traditionally functioned, is seen as a shortcoming considering the relatively short period of time within which the IAS can react to an announcement of displacement due to a closing, technological change or mass layoff. Initiatives are being taken by the government to inject the IAS into situations where no particular displacement is on the horizon, but where experience indicates that displacement will inevitably occur. The government also hopes that the IAS, by getting involved at an earlier stage of the process, may be able to slow or reverse deterioration in a particular enterprise, thus avoiding the necessity for a closure or mass layoff. As a result, the IAS is attempting to formulate an early warning system and to convince employers and employees or their representatives to provide for the establishment of a Joint Consultative Committee in circumstances involving no immediate threat of displacement. There is also pressure being brought to bear by the government to persuade, or require, employers to give greater periods of notice in connection with strategic planning or forecasts that may involve displacement of workers either through technological change or contraction in the company's operations. It is believed that by giving the IAS a continuing role in strategic planning with a company and by involving the employees or their representatives in that process, preventive action or long-term adjustment plans can be formulated to reduce or avoid displacement.

D. Operation of Joint Consultative Agreement/Committee

The Joint Consultative Committee, as indicated, is made up of an equal number of representatives chosen by the employer and by the employees or their bargaining agent. If a union is in place, it will select the employee representatives. If there is no union, the employees are asked to choose their representatives. The total number of employee and employer representatives is usually not more than six. In addition, a neutral chairperson is chosen by the representatives of the parties. This person usually is drawn from the ranks of the education or industrial relations community. The IAS consultant provides technical advice and also acts as a liason between the Joint Consultative Committee and appropriate governmental agencies which may be in a position to provide assistance or money for training or adjustment. The IAS consultant also serves as an ex officio member of the JCC.

Once the Joint Consultative Committee has been staffed and an agreement signed, the Committee identifies the affected employees who wish assistance. The Committee distributes a questionnaire to determine the experience, training, skills and preferences of the employees who wish assistance. (See Appendix 5) At the same time, potential employers are identified and contacted by the Committee in writing as to the availability of employment opportunities. Government programs which can offer a source of assistance or serve as a means of adjusting employees are utilized with the advice of the IAS consultant. Adjustment options which the Committee may explore include finding alternative employment, enrolling in training or retraining, joining a mobility program, establishing in self employment on either an individual or a group basis, taking early retirement and so forth.

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The Committee is to make decisions by consensus. In fact, there are rarely disagreements. In the event of disputes, the chairperson exercises the deciding vote. However, the Committee cannot commit the employer to a particular course of action.

The Committee also reviews the separation package prepared by the employer, which may include items such as severance payments, early retirement options, preferential hiring in other company locations, relocation assistance, retraining plans or financial assistance for workers to enroll in training or education, employment counseling and so on. The Committee is encouraged to evaluate the adequacy of this package and where advisable, seek to achieve improvements.

In appropriate circumstances, as part of the overall strategy to adjust displaced workers, the Committee may also consider some form of employee sponsored buy-out of the existing operation. This option is usually considered in the context of a complete closing where it appears that the operation is still viable.

Committee costs which can be shared by the IAS consist of the regular straight time salaries or wages of the employer and employee representatives while engaged in the actual business of the Committee; necessary disbursements in connection with the operation of the Committee, including travel within Canada, office supplies and clerical assistance; the salary of the chairperson and the fees of consultants that are appointed by the Committee and the IAS, although such consultants are usually accessed when their services are clearly cost effective. If the company insists on using its own consultants, it is not normally considered a shareable cost.

While there are exceptions, the usual cost per employee adjusted in the period following the 1982 recession is between $30 and $150. Interestingly enough, the experience has been that the approved budget for the operation of the Joint Consultative Committee is rarely exceeded and more often is greater than the amount actually spent. This factor is referred to commonly as "slippage." There are a number of reasons for slippage, including the fact that the IAS consultant sets a budget which is not likely to be exceeded to avoid having to go back for a further infusion of funds. The costs of the Committee are usually charged to the company, who then bills the IAS for its share of such expenses. Sometimes the company does not seek reimbursement for the full amount that it would be entitled to receive.

E. Effect of Unionization

The Industrial Adjustment Service works best if a bargaining agent is in place at the establishment. The Joint Consultative Committee is based on a tripartite system, with representatives of the employer and the employees appointed to the Committee. It therefore lends itself to an existing structure where the employees are organized. In an unorganized situation, the employees must choose representatives to act on their behalf. Obviously, where a bargaining agent exists, the process of choosing employee representatives is facilitated. Where ratification of a decision reached by the Joint Consultative Committee is needed, it can be accomplished easily if a bargaining agent exists. Representatives of the IAS generally acknowledge that it is more convenient dealing with an employer whose work force is unionized.

Another factor which directes the IAS to unionized establishments is that nonunionized employers tend to be much less receptive to the overtures of the IAS with respect to forming a Joint Consultative Committee. Although it cannot be statistically proven, it is the authors' view that nonunionized employers may be more likely than their unionized counterparts to use a gradual process of employment terminations in order to avoid triggering group termination provisions. Unionized employers are also more likely to get pressure from the union to establish a Joint Consultative Committee. In addition, unionized employers are generally more accustomed to dealing with industrial relations on a formalized basis and therefore may be more receptive to the prospect of establishing a structure to deal with displacement of workers. On the other hand, employers who have not had to deal with a union may prefer an unstructured and informal means of dealing with adjustment of displaced employees, if they adopt any means of doing so at all.

F. Effect on Employees

A number of studies have been conducted analyzing, in whole or in part, the effect upon employees who are the subject of a plant closure with or without the assistance of the IAS. Some of the results have been surprising even to the researchers. (See Appendix 6 for study references).

First, in an Executive Summary[1] prepared by the IAS and designed to briefly recount its operation and effectiveness, the IAS suggested that its service overall was able to shorten the period of unemployment for individuals--with respect to whom a Joint Consultative Committee was formed--by an average of two weeks. This translated to a savings of approximately $710 per IAS participant compared to an UI expenditure of $110 per person. These statistics were tendered as evidence for the cost effectiveness of the service, as well as its ability to reduce the disruption experienced by displaced employees. The benefits to society included reducing the pressure upon the unemployment insurance system as a result of shorter periods of unemployment. In addition, the summary contended that the existence of Joint Consultative Committees lessened worker resistance to change and improved industrial relations.

Other studies tend to reinforce this optimistic assessment of the IAS. In a paper entitled Labor Market Experiences of Workers in Plant Closures: A Survey of 21 Cases submitted to the Ontario Ministry of Labor in May, 1984,[2] the authors disclosed that the rate of reemployment among persons returning questionnaires was 61% overall, of which 68% of the male respondents were employed and 45% of the female respondents were employed. This figure rose to 78% if persons who had left the labor force were excluded. Similar results for reemployment were found in a study conducted approximately 12 years earlier entitled The Effect of Advance Notice in a Plant Shutdown: A Study of the Closing of the Kelvinator Plant in London, Ontario.[3] The authors found, after nine months from the date of the Kelvinator shutdown, that 62% of the employees were fully employed, 37% were not fully employed, of which four percent were working part-time and one percent had retired.

However, the source of reemployment has been found to primarily involve noninstitutional sources. The 1984 Ontario study[4] noted that 75% of respondents had found jobs through informal direct sources such as family, friends, direct approaches from other employers and so forth. Only nine percent had found jobs through the auspices of the Canada Employment & Immigration Commission. A paper prepared at the University of Manitoba

entitled A Study of Three Plant Closings in Winnipeg[5] reinforced these findings and noted that the three individual shutdown cases, offers were forthcoming from noninstitutional sources in 84%, 57% and 69% of the respondents respectively. For example, the Canada Employment & Immigration Commission ranked fourth out of 10 as the source of jobs and second in terms of effectiveness. The Kelvinator study[7] also concluded that institutional sources were not the major means of finding jobs. It was indicated that 38% of the respondents found jobs by direct application; 21% from a friend or relative; 19% from Canada Manpower (the forerunner of the Canada Employment & Immigration Commission); nine percent from a newspaper advertisement; eight percent from contact by the company; two percent unascertained and three percent "other."

In terms of the effect upon earnings as a result of the shutdowns, most studies predictably indicated that reemployment earnings diminished in constant terms. Both men and women suffered a loss of earnings--in the case of men a nine percent loss, and 20% for women. The 1984 Ontario study, however, indicated that nominal earnings rose from an average of $320 weekly, in the case of men to $354 from $323, and in the case of women nominal earnings diminished to $222 from $232.

In the Manitoba study,[9] statistics showed that on average nominal earnings went up in all three cases. However, in terms of constant dollars the average was, in all cases, a decline of between $40 and $50 per week. The study concluded that overall, 68% of respondents earned less in constant dollars.

The Kelvinator study[7] indicated that 43% of respondents stated their earnings had gone up or stayed the same; 50% said their earnings had gone down and seven percent either didn't know or didn't respond. (It was not mentioned, however, whether these responses were in terms of constant or nominal dollars. Given the date of the study (1970), it is likely that there would be relatively little difference between nominal and constant dollars.)

However, the most surprising result was that a plurality of respondents in all studies indicated that they perceived the overall job satisfaction to be higher in their new job than in the job from which they were terminated. The 1984 Ontario study[10] indicated that 42% of respondents liked their jobs better and only 33% indicatd that their jobs were worse than before. For Manitoba,[11] overall, 71.6% of respondents from all three studies liked their jobs better. This ranged from a low of 64% in one case to a high of 81%. The Kelvinator study[12] suggested that overall 47% of respondents rated their new job higher, 24% rated it the same, 26% rated their job lower than before and three percent did not know or did not answer. The Kelvinator figures were categorized into specific factors of which type of work received a 43% "higher" rating as opposed to a 17% "lower" rating and job security, perhaps not surprisingly, was preferred by 34% and rated lower by only 14%. However, a plurality of 40% indicated they didn't know.

One study, the 1984 Ontario paper,[13] provided statistics as to the change in the rate of unionization before closure and afterwards. This figure is significant given the wide base of the study comprising 21 closures. The authors found that from a rate of 68% at the time of closure the incidence of unionization fell to 39% after the displaced employees found new jobs.

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Several general conclusions can be reached as a result of these studies. First, institutional sources, while not the major factor in locating new jobs, definitely play a role, one that appears to be increasing with respect to more recent studies. In terms of effectiveness, institutional sources rate relatively high. However, noninstitutional sources provide the primary means of reemployment and therefore unreasonable expectations should not be held with respect to the ability of institutional sources to play the primary role in adjusting workers.

Finally, although earning rates appeared to decline as a result of a closure, job satisfaction went up. Some of the more hyperbolic comments regarding the negative effects of plant closures should therefore be discounted.

IV. EMPLOYER OPINION

A. Employees Who Entered Into Joint Consultative Agreement

Employer acceptance of the IAS varies widely depending on the region in question. In Newfoundland, the Regional Director reports only a 50% acceptance rate. In Nova Scotia, a majority of employers who are invited to sign a Joint Consultative Agreement do so. In Quebec, the vast majority of employers enter into agreements. However, this is largely explainable by the fact that forming an adjustment committee is mandated by law in Quebec. In Ontario, 95% to 98% of employers who are approached agree to form a committee. This too may be explained by the fact that in Ontario the Labour Minister can require formation of a committee. In Manitoba, roughly 60% of employers have agreed to the formation of a committee. Again, under recent changes to Manitoba's Employment Standards Act, creation of a committee can be ordered by law.

Representatives of the IAS from all regions indicate that the reaction of employers who have gone through the Joint Consultative process is almost invariably favorable. The IAS also claims a high success rate in terms of workers adjusted relative to the number that apply for assistance. In order to verify these statements, the authors prepared and distributed questionnaires to companies that had been involved with a group termination or mass layoff within the last few years in Manitoba. The limitations of this project did not allow for a wide survey, for example, to employers in Ontario. However, since Manitoba has a well developed and highly diversified manufacturing sector it was believed that responses from employers within the province would be reasonably representative. No claim is made with respect to statistical significance. However, where possible, the results were compared with statistical surveys in other regions and there does appear to be a high correlation of results within those areas.

The questionnaire asked the company to indicate the type of business it engaged in, whether a union was present and the nunmber of workers employed. The questionnaire also asked the number of employees terminated, whether the termination involved a complete or partial closure, whether notice was given and whether the company entered into a Joint Consultative Agreement. Where a committee was formed, the company was asked to describe

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the activities and success of the committee. Respondents were asked to assess the service in terms of effectiveness, satisfaction, cooperation and whether the employer would use the service again. Finally, the company was asked two hypothetical questions: first, whether it would be in favor of making the service mandatory; and second, whether legislative requirements to justify a closure would have an effect on investment decisions.

Approximately 60% of the respondents indicated they had accepted the overtures of the Industrial Adjustment Service and entered into a Joint Consultatitve Agreement. Virtually all of the respondents who had agreed to form a committee gave assessments which could be considered favorable. Only one respondent indicated any reservation with respect to utilizing the services of the IAS in the future. That situation appeared to involve the use of a JCC chairperson who was not considered particularly effective.

The satisfaction rate was generally high. On a scale of one to 10, most respondents were in the six to eight area. Interestingly, even the respondent showing the lowest satisfaction rate (four out of 10) still indicated it would be prepared to deal with the IAS again.

Perhaps the most significant result was that with but one exception, the respondents who used the service rated its effectiveness lower than their satisfaction with it. The effectiveness rating ranged from a low of three to a high of eight with most responses in the five and six area. This tends to suggest that although the respondents generally liked the service and perhaps appreciated the good corporate image that cooperation with the government service gave them, they did not find it to be particularly effective.

Consistent with the generally favorable overall response, the respondents indicated that the representatives of the government agencies were not generally intrusive upon them and further, were reasonably cooperative. It should be noted, however, that many respondents rated the federal government representatives more highly in terms of cooperation than they did their provincial counterparts. One respondent in particular rated the provincial representatives very low in terms of cooperation. A number of companies indicated that they had been subjected to efforts by the provincial representatives aimed at averting the decision to close or layoff workers. The lower esteem accorded the provincial representatives may be unique to Manitoba.

As might reasonably have been predicted, the majority of respondents indicated they liked the voluntary aspect of the Industrial Adjustment Service and were against the prospect of legislation making it mandatory, although this opinion was not unanimous. Two respondents indicated that they were not against legislation requiring the formation of committees. It should be noted, however, that neither of these companies do business any longer in Manitoba.

The responses were strongly negative on the issue of legislation requiring companies to justify a closing. A number of respondents indicated such legislation would have a significant influence on investment decisions. However, other respondents indicated that such legislation would not play a large role in deciding where to locate, perhaps due to the fact, as one company indicated, that once a decision to close is made justification is not difficult because it is not normal practice for companies to close profitable operations.

Analysis of other studies appears to bear out the view that the Industrial Adjustment Service, while useful in placing some employees, does not achieve a uniformly high degree of general effectiveness. One study indicated that approximately 70% of displaced workers found jobs through friends, family or other informal sources while institutiuonal sources including the IAS, Canada Manpower, the company and the union, altogether accounted for approximately 25% of jobs found. Statistics from Ontario and elsewhere suggest that only about half of the employees affected even request assistance from a Joint Consultative Commttee, with varying rates of success achieved for those who do seek help.

It seems reasonable to conclude that the element of voluntariness which has historically applied with respect to the Industrial Adjustment Service and similar agencies contributed greatly to the generally favorable assessment of employers using the service. Because employers have voluntarily agreed to use the service, there is an extent of commitment that would not be present if the service were mandatory. Having started on a positive note, an employer is more likely to view the process positively following its completion. The voluntary element probably also has an effect on the government representatives, who know that if they intrude too much upon the employer's operation or seek to impose their will on an employer their services are more likely to be rejected by other employers or by the same employer on another occasion. This fact encourages cooperative rather than destructive behavior.

Finally, since most employers prefer to maintain a good image with the government, they are most likely to view as favorable an agency that is perceived as benign and can cause no further harm.

B. Employers Who Declined

Employers who declined the services of the IAS were not generally forthcoming as to the specfic reasons why they chose to turn down the offer of assistance. Some indicated that they felt the IAS was not worthwhile. Others appear to have already committed the maximum number of dollars towards adjustment and were unwilling to get involved in a process that would involve added expense. Still others formed their own joint committee along much of the same lines as are usual for a committee set up under the auspices of the IAS. Some employers appear to have avoided triggering group termination provisions pursuant to either provincial or federal legislation to intentionally avoid attracting the attention of government agencies.

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The survey did not disclose any differential on the basis of size between employers who accepted the offer of the IAS and those who did not. Other studies, however, have indicated that smaller employers are less likely to form Joint Consultative Committees. In part, this may be due to the structure of the IAS itself. The agency is less interested in and less likely to become aware of smaller closings or terminations. As a matter of policy, Joint Consultative Agreements were not usually signed with employers where less than 20 workers were affected.

Some employers, although they did not accept the IAS, still support the concept. However, they are strongly in favor of voluntarism. One employer who favors the IAS, even though it did not utilize its services, had this to say:

> "Concentration on voluntary programs stresses creativity and problem solving. In dealing with mandatory controls, too much effort is wasted by industry and government trying to outwit each other. Strong, positive and creative voluntary programs will attract industry cooperation."

It is noteworthy that this employer committed between $15,000 and $20,000 in an effort to adjust 95 employees, although there was no indication in the response to the questionnaire how many employees were successfully adjusted. This computes to an expenditure of between $150 to $200 per employee affected. That is in excess of the amount usually committed on a cost sharing basis pursuant to the signing of a Joint Consultative Agreement.

Employers who declined to use the IAS did not generally feel that anything had been lost as a result. Although the possibility exists that this view is somewhat self-serving, the generally low rates of overall effectiveness of the IAS, in terms of jobs located as a percentage of the total, would tend to support such opinions. It should be noted that all employers, including all respondents who declined, nevertheless went to considerable effort to assist displaced employees. It is possible that employers who declined the services of the IAS and who made little or no effort to help employees would also be unlikely to respond to a request for information that would tend to show them in a bad light. There appears to be little question that the IAS would confer a worthwhile service in circumstances where the employer was otherwise not inclined to commit much time, effort or money in an effort to adjust employees. Where employers are prepared to commit considerable effort and financial resources in an effort to minimize the effects of a group termination, the IAS may still make a contribution, but not necessarily an essential one.

There are probably a number of reasons why smaller enterprises are less likely to become involved with the IAS. As mentioned, the IAS tends to focus upon larger enterprises and is more likely to become aware of larger terminations simply by virtue of the advance notice requirements. Moreover, smaller employers are not only not as visible but are generally less sophisticated and less oriented to institutionalized ways of doing things. It is obviously less difficult to place smaller numbers of individuals and therefore the employer, as well as the IAS, may perceive less need to become involved with the other. Finally, a group termination in a smaller enterprise is more likely to involve a closing rather than a lay off and therefore it is more difficult to locate persons in a position to make decisions and exercise authority.

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C. Effect of Unionization

There appears to be a more marked disinclination upon the part of unorganized employers to become involved with the IAS. In the survey, one-third of the companies who declined the IAS were non-union while one-seventh of the employers who accepted the IAS were non-union. Overall, statistics indicate that 50% of the employers utilizing the IAS are union, indicating that unionized employers are disproportionately represented among the clients of IAS. The general ratio in Canada is approximately 35% unionized and 65% non-unionized. In part, this can be explained by virtue of the fact that plant closings may occur more often in unionized establishments than in non-union ones. For example, in the survey conducted by the authors, 80% of the respondents who had been involved in a group termination were unionized. This startling ratio is not duplicated in other studies, but indications are that the trend is there, while not as dramatic. This trend is also supported by the fact that most studies show the source of new jobs for displaced workers to be primarily from non-union employers.

Again, there are probably many reasons for the fact that non-union employers tend to use the IAS less than their unionized counterparts. Non-union employers tend to be smaller, and smaller employers are less likely to become involved with the IAS. In addition, non-unionized employers may be more suspicious of government agencies, particularly when a substantial proportion of government employees, including the members of the IAS staff, are unionized. Although there is no evidence to support the view that IAS employees might tend to promote unionization within the work force of a client company, non-union employers, particularly those who are not closing completely, may not be prepared to leave this to chance.

D. Summary

In summary, then, employers who have gone through the Joint Consultative process generally express favorable views as to the experience, although they appear to set fairly low expectations as to effectiveness. Of employers who declined, some appear to have done so because they considered the IAS to be superfluous. Others simply wanted to avoid, for various reasons, any contact with government whatsoever. It is suggested that the generally favorable views of employers who have utilized the service are due in large part to the element of voluntarism which provides a sense of commitment among those employers and also confers a substantial incentive on the part of IAS representatives to "sell" their service and satisfy their "customers." Smaller employers are less likely to be involved with the service because of a mutual opinion that the IAS is less applicable to small employers. Non-union employers, which tend to be smaller on average than unionized employers are less likely to be involved in a group termination in the first place, and less inclined to enter into a Joint Consultative Agreement with the IAS to avoid attracting the attention of government and organized labor.

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APPENDICES

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APPENDIX I

COMPARATIVE CHART OF PLANT CLOSING LEGISLATION
IN VARIOUS JURISDICTIONS IN CANADA

Jurisdiction and Legislation	Number of Employees	Notice Required	Copy of Notice To	Other Requirements	Severance Pay	Special Provisions
Federal Canada Labour Code and Canada Labour Standards Regulations	50 or more who have completed 3 consecutive months of continuous employment	16 weeks Notice in writing is given to Minister of Labour	1. Minister of Labour 2. Minister of Employment and Immigration 3. CEIC 4. Trade union recognized to represent the employees as bargaining agent, or any employee not represented by a trade union or posted by the employer in a conspicuous place of the industrial establishment	Employer must cooperate with CEIC to facilitate re-establishment in employment. Employer must establish a Joint Planning Committee to develop an adjustment program in order to minimize the impact of termination and assit employees in obtaining other employement. A layoff is not deemed to be a termination when: it is the result of a strike or lockout (even one in another establishment if it forces the employer to reduce his operations); it is for a term of 3 months or less; it is for more than 3 months but the employee is given notice that he will be recalled within 6 months of the beginning of the layoff; it is for more than 3 months but the employee continues to receive payments from his employer, the employer continues to make payments to a pension or an insurance plan, the employee receives supplementary unemployment benefits or is entitled to them but is disqualified pursuant to the Unemployment Insurance Act, 1971; or the layoff is for more than 3 months but not more than 12 and the employee maintains recall rights pursuant to a collective agreement. Seasonal or casual employees are excluded. Employer and trade union may contract out of the group notice provisions.	Greater of 2 days' wages for each completed year of employment or 5 days' wages at regular rate must have at least 12 consecutive months of employment.	Arbitration of disputes arising in the Committee -restricted to matters normally forming part of collective bargaining in respect of termination of employment. The Minister of Labour may grant pay in lieu of notice upon petition by the employer.

Jurisdiction and Legislation	Number of Employees	Notice Required	Copy of Notice To	Other Requirements	Severance Pay	Special Provisions
Ontario Termination of Employment Regulation under the Employment Standards Act	50-199 200-499 500 or more who have been employed for more than 3 months	8 weeks 12 weeks 16 weeks Notice in writing to each person whose employment is to be terminated.	Minister of Labour must be notified in writing giving reasons for the termination	Where bumping is permitted by the terms of employment, the employer may post a notice in a conspicuous place listing the person to be terminated, his/her seniority and job description and setting forth the date of termination. The posting of the notice is considered a notice of termination as of the day it is posted. A layoff is not deemed a termination when: it is for not more than 13 weeks; or it is for more than 13 weeks but the employee continues to receive payments from the employer, the employer continues to make payments to the employees' retirement savings or pension plan or insurance plan, or the employee is entitled to supplementary unemployment insurance but does not receive it because he is employed elsewhere during the layoff; it is for more than 13 weeks but the employee is recalled within the time fixed by the director of employment standards. For a week to count, the employee must have earned less than 50% his normal wages during that week. Employees employed in construction or seasonal industries or for a definite term or task, who are guilty of wilful misconduct, are retired with unreduced benefits, or who refuse a reasonable offer of employment with the employer, are excluded. The group notice provisions do not apply if less than 10% of the work force are terminated unless it is due to a permanet discontinuance, or if the termination is due to frustration not involving the Environmental Protection Act.	Where 50 or more employees are terminated within 6 month period, 1 weeks' pay for each year of employment to a maximum of 26 must have been employed 5 years or more.	Referee has wide remedial power if determines that an "Act", arrangement or scheme is intended to have or has the effect of defeating the true intent of the Act and the Regulations. The Minister of Labour may grant pay in lieu of notice upon petition by the employer.

Jurisdiction and Legislation	Number of Employees	Notice Required	Copy of Notice To	Other Requirements	Severance Pay	Special Provisions
Manitoba Employment Standards Act	50-100 101-300 over 300	10 weeks 14 weeks 18 weeks Notice in writing to Minister of Labour	1. Minister of Labour 2. any trade union certified to represent the employees, or recognized by the employer as bargaining agent 3. individual employees not represented by a union or posted by the employer in a conspicuous place in the establishment	Employer must co-operate with Minister in any action or program aimed at facilitating re-establishment in employment. Employee must participate in Joint Planning Committee. After notice is given, he may not change conditions of employment or wage rates except with written consent of employees or if a collective agreement authorizes the change. Employee who wishes to terminate employment before expiry of notice must notify the employer in writing. A layoff is not deemed a termination when: it is customary, during that period of year, to layoff employees because of the seasonal nature of the industry and the employee has been advised, upon being hired, that he may be laid off; it is for a term of 8 weeks or less in any period of 16 consecutive weeks; or it is for more than 8 weeks and the employer recalls the employee within the time specified by the Minister or the employee continues to receive payments from the employer or the employer continues to make payments to the employee's pension or insurance plan. Seasonal or construction employees, employees on strike or locked out, guilty of wilful misconduct, retired, employed for a definite term or task or who refuse reasonable employment are excluded.	NO	Joint Planning Committee has mandate to find ways to avert closing - not restricted in scope to those matters normally forming part of collective bargaining - however Joint Planning Committee does not have power to prohibit closure or impose penalties. The Minister of Labour may grant pay in lieu of notice upon petition by the employer.

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Jurisdiction and Legislation	Number of Employees	Notice Required	Copy of Notice To	Other Requirements	Severance Pay	Special Provisions
Quebec Manpower Vocational Training and Qualification Act and Regulation	10-99 100-299 300 or more	2 months 3 months 4 months to the Minister of Manpower and Income Security	The notice must be posted at the Manpower Branch	Upon request to the Minister, an employer must immediately take part in the establishment of a committee on reclassification of employees. No employer shall make a collective dismissal during the delay which follows the notice. If layoff is not a dismissal, if it is for less than 6 months. Seasonal or intermittent employment is excluded as are employees engaged in a strike or lock out.	NO	Minister may allow employer to give less than statutory notice if termination was unforeseeableand gave as much notice as possible.
Nova Scotia Labour Standards Code	10-99 100-299 300 or more whose period of employment is more than 3 months	8 weeks 12 weeks 16 weeks Notice in writing to each person whose employment is to be terminated	Minister of Labour must be informed in writing of any notice given	After the notice is given, the employer may not alter the rates of wages or other conditions of employment of a person to whom notice has been given. A layoff or suspension of 6 consecutive days or less is not deemed a termination. Employees employed for a definite term or task in construction, terminated for a reason beyond the employee's control or who has refused reasonable alternative employment are excluded.	NO	The Minister of Labour may grant pay in lieu of notice upon petition by the employer.

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Jurisdiction and Legislation	Number of Employees	Notice Required	Copy of Notice To	Other Requirements	Severance Pay	Special Provisions
Newfoundland Labour Standards Act	50-199 200-499 500 or more whose contracts of service have subsisted for more than 1 month	8 weeks 12 weeks 16 weeks Notice in writing to each employee whose employment is to be terminated	Minister of Labour and Manpower must be notified and informed of the reasons for termination	Where an employer fails to give the required notice to individual employees and to the Minister within the time prescribed, no action may be taken by the employer to terminate the services of the employees. A layoff for a period not exceeding one week is not deemed a termination.	NO	The Minister of Labour may grant pay in lieu of notice upon petition by the employer.
New Brunswick	More than 25 employees representing at least 25% of the work force	4 weeks Notice in writing to each employee whose employment is to be terminated	Minister of Labour must be notified in writing	A lay off is not termination if it does not exceed six days. Retirement, employment for a definite term or task, or in construction or seasonal industries, are excluded.	NO	Group notice provisions are only effective if employees are covered by collective agreement. The Minister of Labour may grant pay in lieu of notice upon petition by the employer.

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Jurisdiction and Legislation	Number of Employees	Notice Required	Copy of Notice To	Other Requirements	Severance Pay	Special Provisions
Yukon Territory Employment Standards Act	25-49 50-99 100-299 300 or more	4 weeks (+1) 8 weeks (+1) 12 weeks (+1) 16 weeks (+1)	Director of Employment Standards	A layoff not exceeding the period prescribed in the regulations is not a dismissal. Seasonal and construction employment, terminations due to frustration or for cause and refusal to accept alternative employment are causes for exclusion.	NO	

* Alberta, British Columbia, Prince Edward Island, Saskatchewan and the Northwest Territories have, as yet, no provisions regarding notice of group termination.

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APPENDIX 2

CASE REFERENCES

1. Falconbridge Nickel Mines v. Simmons and United Steel Workers of America and Sudbury Mine, Metal and Smelter Workers Union, Local 598, 78 CLLC 14143 (Ont. H.C.J.), at p. 1.

2. Re: Telegram Publishing Co. Ltd., (1980), Referee Carter, unreported, at p. 1.

3. Re: Dylex Limited and Amalgamated Clothing and Textile Workers Union, (1986) Referee Swan, unreported, at p. 2.

4. Re: Agincourt Motor Hotel, (1982), Referee Davis, unreported, at p. 2.

5. Re: Ontario Hydro and Ontario Employees Union Local 1000, (1984), Referee Norris Davis, unreported, at p. 3.

6. Supra, Footnote 2, at p. 4.

7. Supra, Footnote 3, at p. 5.

8. Supra, Footnote 4, at p. 6.

9. Liberty Trucking Company v. Department of Industry, Labor and Human Relations et al, 204 NW 2d 457 (1973) at p. 6.

10. Supra, Footnote 3, at p. 8.

11. Supra, Footnote 2, at p. 12.

12. Christie Brown and Company Limited v. The Retail Wholesale Bakery and Confectionary Workers, Local Union #650, (1978), Manitoba Queen's Bench, Referee Deniset, J., unreported, at p. 12.

13. Supra, Footnote 3, at p. 13.

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APPENDIX 3

NATIONAL AND REGIONAL OFFICES
OF THE INDUSTIRAL ADJUSTMENT SERVICE

NATIONAL HEADQUARTERS

140 Promenade du Portage
Place du Portage
Phase IV
Ottawa/Hull
K1A 0J9

NEWFOUNDLAND

167 Kenmount Road
P.O. Box 12051
St. John's
A1B 3Z4
Tele.: 709/772-2295

PRINCE EDWARD ISLAND

199 Grafton Street
P.O. Box 8000
Charlottetown
C1A 8K1
Tele.: 902/566-7687

NOVA SCOTIA

1888 Brunswick Street
P.O. Box 2463
Halifax
B3J 3E4
Tele.: 902/426-6025

NEW BRUNSWICK

565 Priestman Street
P.O. Box 2600
Fredericton
E3B 5V6
Tele.: 506/452-3704

QUEBEC

1441 St. Urbain Street
Montreal
H2X 2N6
Tele.: 514/283-4634

ONTARIO

700 - 1000 Yonge Street
Willowdale
M2N 6A8
Tele.: 416/224-4681

MANITOBA

Eaton Place
710 - 330 Graham Avenue
Winnipeg
204/949-3206

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APPENDIX 4

SAMPLE JOINT CONSULTATIVE AGREEMENT

SUB. NO._____

ASSESSMENT INCENTIVE AGREEMENT

THIS AGREEMENT dated the _____ day of _____ 198__, is BETWEEN:

THE MINISTER OF EMPLOYMENT AND IMMIGRATION
(hereinafter referrred to as "the Minister")

AND:

THE MINISTER OF LABOR FOR ONTARIO
(hereinafter referred to as "the Provincial Minister")

AND:

_____
(hereinafter referred to as "the Company"

AND:

_____
(hereinafter referred to as "the Union"

WHEREAS the Minister of Employment and Immigration is authorized under the Labor Mobility and Assessment Incentives Regulations to enter into agreements with provinces, employers and workers in respect of labor mobility and assessment incentives;

AND WHEREAS the Company and the Union have jointly requested the Minister to assist them through the facilities of the Industrial Adjustment Service, to examine and assess the problems associated with changes anticipated in the operations of the Company;

AND WHEREAS the Provincial Minister, in the exercise of that office, is authorized to sign this Agreement;

NOW, THEREFORE, THIS AGREEMENT WITNESSETH that the parties hereto, in consideration of the convenants and agreements hereinafter contained, convenant and agree with each other as follows:

1. The Company and the Union will establish and maintain, for the duration of this Agreement, an Adjustment Committee (hereinafter referred to as "the Committee") consisting of a Chairperson and an equal number of representatives from the Company and the Union, to administer a program of research and assessment of the problems associated with the changes anticipated in the Company's operations and to develop a private program of adjustment to meet these changes.

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2. The Company may appoint its representatives on the Committee in any manner they deem suitable. However, they shall notify the Union and the Industrial Adjustment Service, in writing, of these appointments stating the name and occupation of each. It will be the responsiblity of each party to appoint alternate and replacements as necessary to ensure that they are properly represented on the Committee at all times.

3. The Chairperson of the Committe will be selected and appointed by the Committee, subject to the approval of the Industrial Adjustment Service. Such appointment will be made by instrument, in writing, stating the duties, remuneration and tenure of the Chairperson.

4. (a) A representative of the Industrial Adjustment Service shall be notified in advance of all meetings of the Committee and may attend any or all of such meetings to advise and assist the Committee in the performance of its functions.

   (b) A representative of the Provincial Minister may attend any or all meetings of the Committee to advise and assist the Committee in the performance of its functions. If requested, the Chairperson will notify such representative in advance of all meetings of the Committee.

5. The Company and the Union, assisted by the Industrial Adjustment Service, will jointly establish the responsibilities and general objectives of the Committee. The Committee will then establish the terms of reference, specific objectives and methods of procedures.

6. The Company will make available to the Committee information concerning the planned changes in its operations in such detail as will permit a proper investigation and analysis of the impact of these changes on the work of the employees to be affected and will facilitate the collection of employee data by the Committee to allow the development of an adjustment program.

7. All persons appointed as representatives to the Committee agree to hold in strict confidence any information concerning the Company's plans or operations, personal data on individual workers, and any other information of a confidential nature which is revealed to them by reason of their appointment to the Committee.

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8. The Committee shall ensure that any of the services it offers to the public, including any brochures, pamphlets, correspondence or advertisement, be provided in both official languages of Canada when such service is addressed to the public in general, or in the official language chosen by the client when the service is provided on an individual basis.

9. The Committee will make a report of its activities and recommendations to the parties and the Committee Chairperson will send confidential copies of such report to the Minister and to the Provincial Minister.

10. Coincident with the date on which the Committee submits its final report and recommendations to the parties, this Committee shall have no further duties and responsibilities under the terms of this Agreement and it shall therefore cease to exist.

11. The principal parties to this Agreement shall be vested with the responsibility of assessing the report and its recommendations, and thereafter may implement its recommendations as they deem advisable.

12. The Company and the Union recognize that each has certain rights, obligations and responsibilities, some of which are set forth in the existing collective agreement between them, and that neither this Agreement nor any joint consultation which may take place under it modifies or affects the rights, obligations and responsiblities of either party.

13. The Reponsibilities and objectives of the Committee will be:

    ( ) To recommend to the Company and the Union joint courses of action which the Committee deems to be essential in the development of an effective adjustment program.

    ( ) With the assistance of the Industrial Adjustment Service to bring to bear and make the most effective use of all public measures and services available from the federal and provincial governments.

14. The costs of the program shall be shared as follows:

    ⅓ by the Minister
    ⅓ by the Provincial Minister
    ⅓ by the Company

15. The Company shall advise the Industrial Adjustment Service, in writing, of the name of the person who will be responsible for making applcaiton for the incentive. It will be the responsibility of the Company to appoint alternate and replacements as necessary and to notify, in writing, the Industrial Adjustment Service of any such replacement.

12/

16. The Company will pay all shareable costs, as set forth in Schedule "A" attached hereto, in relation to the identification and assessment of the problems and the development of the adjustment program, upon presentation of vouchers or statements of account, which have been approved by the Committee and submitted to it by the Chairperson, in accordance with the regular administative practices of the Company.

17. (a) The Minister will pay the Company as assessment incentive which shall be equal to _____ percent of the shareable costs paid by the Company in accordance with Section 15, but such incentive shall not exceed _____ or such greater amount as the Minister may approve. No member of the House of Commons shall be admitted to any share or part of this Agreement, or to any benefit to arise therefrom.

(b) The Provincial Minister will pay the Company an assessment incentive which shall be equal to _____ percent of the shareable costs paid by the Company in accordance with Section 15, but such incentive shall not exceed _____ or such greater amount as the Provincial Minister may aprove.

18. (a) Subject to this Agreement, the assessment incentive shall be due and payable, in full, 30 days after the date the Minister receives the report referred to in Section 9, but the Minister may, on application thereof by the Company, make progress payments on account of the assessment incentive to reimburse the Company for shareable disbursements made to the date the application is made.

(b) Subject to this Agreement, the assessment incentive provided by the Provincial Minister shall become due and payble, in full, 30 days after the date the Provincial Minister receives a copy of the report referred to in Section 9, but the Provincial Minister may, on application therefore by the Company, make progress payments on account of the assessment incentive to reimburse the Company for shareable disbursements made to the date the application is made. All such applications for reimbursement shall be made through the Industrial Adjustment Service. The Industrial Adjustment Service will advise the provincial minister as to the correctness of the application by the company.

19. The amount of the progress payment made in accordance with section 18(a) shall not exceed _____ percent of the shareable disbursements made by the company for the period in respect of which it is paid.

13/

20. (a) the minister will not be required to make progress payments totalling more than _____ prior to receiving the copy of the report referred to in secion 9.

    (b) The Provincial Minister will not be required to make progress payments totalling more than _____ prior to receiving the copy of the report referred to in Section 9.

21. Notwithstanding Sections 18(a) and 19(a), no payment will be made by the Minister on account of the assessment incentive unless an application therefore is made in such form as the Minister may prescribe and accompanied by such other forms or documents as the Minister may require.

22. The Company will keep and make available to the Minister and the Provincial Minister such records as they deem necessary to substantial any claims for the payment of the assessment incentive and will allow free access to such records, at convenient times, to all persons authorized by law to keep or examine the records relating to the accounts of the Canada Employment and Immigration Commission or of the Ministry of Labor for Ontario.

23. This Agreement shall remain in full force and effect for a period of _____ months from the date first above written and may be extended by mutual consent of the parties should additional time be required by them to fulfill its terms and conditions, or it may be terminated on 30 day's notice at the written request of any party.

IN WITNESS WHEREOF the parties have signed below, in the presence of:

WITNESS	MINISTER OF EMPLOYMENT AND IMMIGRATION
WITNESS	MINISTER OF LABOR FOR ONTARIO
WITNESS	
WITNESS	

14/

SCHEDULE "A"

SHAREABLE COSTS

For the purpose of Section 16 of the Assessment Incentive Agreement, the shareable costs are as follows:

1. The regular straight-time salaries of representatives of the Company and the Union for the time actually engaged in the business of the Committee as certified by the Chairperson.

2. Necessary disbursements for traveling (except travel outside Canada), office supplies, clerical and stenographic services, preparation and printing of reports, and such other expenses as are approved by the Industrial Adjustment Service.

3. Salaries as follows, provided prior approval is obtained from the Industrial Adjustment Service:

   (a) Remuneration of the Chairperson of the Committee.

   (b) Remuneration of persons appointed by the Committee to conduct investiagtions and to assist in the development of the adjustment program.

15/

APPENDIX 5

INDUSTRIAL ADJUSTMENT SERIVCE

_____Committee

Memo to: Laid-Off Employees

As you may have learned, recently a Joint Adjustment Committee has been established under an agreement between the company, your representatives and the Minister of Employment and Immigration to plan adjustments and assist the workers who will be affected by the change in company operations.

In order to be of assistance, the committee must have knowledge of the present employees and we would be obliged if you would complete the following questionnaire and the attached form and return them both to the company or to any member of the committee.

Your Name:_____

1. Have you found another job? Yes _____ No _____

2. If "yes," how did you obtain your present job?

   On your own? _____ Through friends? _____

   Through the Canada Employment Centre? _____

3. Is it a full-time job? Yes _____ No _____

4. If "no" to either No. 1 or No. 3, above, do you wish the assistance of the Joint Adjustment Committee in finding other employment?

   Yes _____ No _____

5. If "yes" to No. 4, please complete the attached Personal Data Sheet and answer the following quesitons:

   (a) Do you own or rent your present residence? (check one)

   Own _____ Rent _____

16/

(b) Would you be willing to move to another community to accept another job, if your moving costs were paid? (Check those you wish)

i) Yes _____

ii) Yes, if it means another job with this company ____

iii) Yes, if it means a job at the same or higher pay _____

iv) Yes, after _____ months, if I am unable to find a job here _____

v) No _____

If you do not wish to move regardless of the circumstances, the committee would be obliged if you would state your reasons:

_____
_____
_____

(c) How far would you be willing to travel to work every day?
_____ kilometres _____ miles

(d) If retraining were suggested to you under the National Training Act, would you be interested? Yes ____ No ____

6. In trying to help you find other work it would assist the Committee if you could indicate any companies where you would like to work or types of work you would like to do. If you have any preferences, please state them:

_____

_____

_____

_____

17/

IAS QUESTIONNAIRE OF EMPLOYEES

INDUSTRIAL ADJUSTMENT SERIVCE

_____ Adjustment Committee

PERSONAL DATA SHEET

1. Name _____ _____
(last) (first)

2. Home Address _____ Tel. # _____

3. Age _____ Marital Status _____ Number of Dependents _____ Soc. Sec. # _____

4. Last school grade completed _____ Where? _____

5. Additional training or education received through night school, correspondence or other courses since leaving school:
_____
_____

6. Certificates or other qualifications held:
_____
_____

7. Date of employment with this company _____

8. Employment history with this company (show present position first):

From Mo./Yr.	To Mo./Yr.	Kind of Work or Job Classification	Hourly, Weekly or Monthly Rate

9. Prior employment history:

From Mo./Yr.	To Mo./Yr.	Name & Location of Company	Kind of Work, or Job Classification

10. Languages - Spoken: English _____ French _____ Other _____
Written: English _____ French _____ Other _____

(to be returned to a committee member)

18/

APPENDIX 6

PLANT CLOSINGS STUDY REFERENCES

1. Industrial Adjustment Service Program, Executive Summary, 1984, Industrial Adjustment Service.

2. Ontario. Ministry of Labour. Labor Market Experience of Workers in Plant Closures: A Study of 21 Cases. Toronto: Ministry of Labour, 1984 at p. 1.

3. Portis, B. and Suys, M.G. Circumstances of the Kelvinator Shutdown: Severance Benefits. The Effect of Advance Notice in a Plant Shutdown: A Study of the Closing of the Kelvinator Plant in London, Onatario. London: School of Bus. Admin. University of West Ont., 1970., 1970 at p. 10.

4. Supra, Footnote 3, at p. 19.

5. "A Study of Three Plant Closings in Winnipeg," 1983, University of Manitoba, at p. 4.

6. Supra, Footnote 3, at p. 19.

7. Supra, Footnote 2, at pp. 26-27.

8. Supra, Footnote 5, at p. 6.

9. Supra, Footnote 3, at p. 19.

10. Supra, Footnote 2, at p. 27.

11. Supra, Footnote 5, at p. 6.

12. Supra, Footnote 3, at p. 22.

13. Supra, Footnote 2, at p. iii.

The National Center on Occupational Readjustment, Inc.

Information and publications available from NaCOR:

Managing Plant Closings and Occupational Readjustment: An Employer's Guidebook is a comprehensive examination of successful planning and program options available to managers facing a work force reduction or plant closing. It is part of a broad effort by concerned members of the business community to exercise a responsible role in minimizing dislocations caused by plant closings, consistent with the efficient functioning of our economic system. (238 pages; $40 to non-sponsors).

Regulatory Plant Closings and Mass Layoffs: A Summary of Foreign Requirements details current plant closing and individual termination laws in European Community member states, Sweden and Japan. (123 pages; $20 to nonsponsors).

Why Plants Close: Growth Through Economic Transition focuses on the reasons for plant closures and some of the many positive efforts currently underway to assist dislocated workers. Acknowledging the harmful effects of plant closings and mass layoffs, this pamphlet sets these events within the broader context of economic dynamicism and the ability to create jobs. (12 pages; minimum order $10).

NaCOR Clearinghouse: a bi-monthly publication that analyzes articles on relevant plant closing and major work force reductions from publications across the U.S. (Free to sponsors, $95 annually to others).

Legislative Status/Analysis Report: a current, objective review and anlysis of major plant closing legislation at the federal, state and local level. (Free to sonsors; $95 annually to others).

NaCOR is organized as a nonprofit 501(c)(3) organization and all contributions are tax deductible.

For further information on NaCOR activities, publications or other benefits of sponsorship, please contact:

Gretchen E. Erhardt
Director

NaCOR
1331 Pennsylvania Avenue, NW
Suite 1500, North Office Lobby
Washington, DC 20004-1703
202/637-3039

Mr. MARTINEZ. Thank you, Mr. Soutar.
Mr. Johnston.

STATEMENT OF J. BRUCE JOHNSTON, EXECUTIVE VICE-PRESIDENT, EMPLOYEE RELATIONS, USX

Mr. JOHNSTON. Mr. Chairman, ladies and gentlemen, my name is Bruce Johnston. I am Executive Vice-President for Employee Relations at USX Corporation, a large diversified manufacturer, and I am a board member of NAM. To represent those institutions here this morning is my privilege.

As you may know, NAM is an organization of 13,500 manufacturers of almost all nature and size, in every state of the union. I have been privileged to serve as chief company negotiator, also as chief industry negotiator at various times in coal, cement, construction and maritime industries for those industries on behalf of USX.

I appreciate very much the opportunity to tell you about some of what we regard to be serious deficiencies in the proposed bill and I will not read what I have submitted. I will simply tell you that I have written every word of it on behalf of the people whom I represent and I would urge you to study it carefully. I will summarize, if I can, in the 5 minutes allotted me what we regard to be serious problems.

Before saying that, I should note that there are some good things in the bill. We think that provisions for retraining, job search assistance, for counseling, for repairing educational deficiencies are worthy of serious consideration and, hopefully, adoption.

Notification and some of the other provisions of the bill are a little more complex.

Let me talk about what I consider to be glaring deficiencies, extemporaneously. One of my closest colleagues on my staff who is with me today, Mr. Jim Short, participated in the Brock task force. That task force studied and considered many things, and there was healthy give and take and lots of agreements, lots of disagreements, but one of the things that there was almost no disagreement on was the fact that this is not essentially a big company problem.

Most large companies have extensive programs already in place, including large financial support, for people who are displaced by the inevitable change from ebb and flow of a healthy economy. The bill, however, seems directed primarily at large companies with the sponsorship of organized labor, whom most of us in large companies have long histories of collective bargaining relationships with, and under which we have already established extensive programs.

There is no distinction effectively made in the bill between a plant closing and a so-called mass lay-off. As I have explained in our statement, in many industries, there simply is no opportunity to give 90 or a 120 or, in some cases, as the bill requires, a 180 days notice.

Under our primary labor contract with the steelworkers, we give wherever practicable 90 days notice in plant closings and I can think of no instances since we have had that requirement where we have ever failed to give that notice, but that is not always possible for layoffs.

Now, that notice is a requirement for a plant closing. When you come to lay-offs, you simply cannot repeal the market forces of customers and competition simply because Congress legislates. Customers are not required and often because of their own market requirements for the basic products we manufacture cannot give us that kind of notice.

There are too many internal and external factors which affect production costs, which affect markets, which affect ordering patterns for us to ever be able to offer as a legislative requirement that kind of notice, or failing that, be required to prove in endless litigation that our failure to give such notice was reasonable under the circumstances. That, I do not believe to be the real world.

Let me give you one example of several large facilities in our company where that kind of notice has not always been possible, and that is in the tubular applications, where we make oil industry tubulars, casings, large diameter pipes, small diameter pipes, and so on for the oil and gas industry.

Those plants thrived in the seventies and early eighties. Then, with the collapse of OPEC, with the sudden drop in oil prices, drilling activity ceased in this country. Very suddenly and very abruptly, people cancelled orders, changed price quotes to us for what they were willing to pay for the product, and in the entire domestic tubular end of the steel business, the large lay-offs inevitably occurred.

We are not ready to say that those plants are closed. We think drilling is going to resume. It would be a waste of our assets and scarce resources to now have to pay a round, a legislative round of cost benefits to our employees on top of those we have already negotiated in our collective bargaining agreements and then be subject to recalling and retraining another work force subject to another round of benefits when those markets inevitably recover.

We are perfectly willing to assume the risk of holding those plants in readiness, to pay the fixed costs and the taxes that go with them, but we are not ready to say that they are permanently closed. We think that would be disastrous for our employees and the economy.

The bill would provide in its present form, in many cases, that a 180 days notice could be a self-fulfilling prophecy. If we are required to announce 6 months in advance in order to escape our liability under a piece of legislation that a plant may close, your customers, your lines of credit, your competition all begin to take very aggressive advantage of that kind of a requirement.

Mr. MARTINEZ. 1 minute to wrap up.

Mr. JOHNSTON. Moreover, there are proprietary and entrepreneurial requirements that are being mandated in the bill for the transfer of information, competitive information and privileged information. It would add another round of cost increases without any regard to the system in place. It directs companies to "agree" and I am sure all of you who know what agreements to agree amount to ultimately. We have some problems with that.

If employees are going to be paid in the event of an impasse, the natural tendency is to produce an impasse. I think that I can conclude by saying that labor's agenda before this Congress from family leave to plant closing is one of the most extensive that I

have ever seen. In every instance, including this bill, Mr. Chairman, we are either saying that there will be less productivity for our employees, from our employees, or more costs in this whole range of bills.

When we add cost and lower productive input, we are going to—the definition of inflation, that means higher costs for products in our imperiled manufacturing sector, that means we are going to be less competitive in the world markets, and that is apt to lead to plant closings.

I think that there is much good hearted intention in the bill, but it needs much hard headed revision.

Thank you.

[The prepared statement of J. Bruce Johnston follows:]

National Association of Manufacturers

TESTIMONY OF

J. BRUCE JOHNSTON
EXECUTIVE VICE PRESIDENT, USX CORPORATION

ON BEHALF OF THE

NATIONAL ASSOCIATION OF MANUFACTURERS

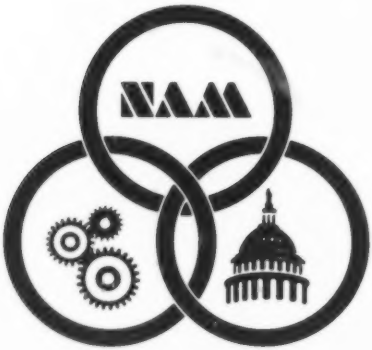
ON

THE ECONOMIC DISLOCATION AND WORKER ADJUSTMENT ASSISTANCE ACT OF 1987, H.R. 1122

BEFORE THE

SUBCOMMITTEES ON LABOR-MANAGEMENT RELATIONS AND EMPLOYMENT OPPORTUNITIES
COMMITTEE ON EDUCATION AND LABOR

MARCH 17, 1987



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Testimony of
J. Bruce Johnston
Executive Vice President, USX Corporation
on behalf of the
National Association of Manufacturers
on
The Economic Dislocation and Worker Adjustment
Assistance Act of 1987, H.R. 1122
before the
Subcommittees on Labor-Management
Relations and Employment Opportunities
Committee on Education and Labor
March 17, 1987

INTRODUCTION

Mr. Chairman and members of the Subcommittees, my name is J. Bruce Johnston. I am Executive Vice President, Employee Relations, for USX Corporation. I am appearing here today on behalf of the National Association of Manufacturers, an association in which my corporation is an active member and on which I serve as a member of its Board.

The National Association of Manufacturers is an organization of over 13,500 corporations of every size and industrial classification located in every state. Members range in size from the very large to over 9,000 smaller manufacturing firms, each with an employee base of less than 500. NAM member companies employ 85% of all workers in manufacturing and produce over 80% of the nation's manufactured goods. NAM is affiliated with an additional 158,000 businesses through its National Industrial Council and Associations Council.

In my capacity at USX, I have negotiated major labor contracts with large interna-

tional unions for over 30 years. I have served as Chairman of the Steel Companies Coordinating Committee for labor bargaining in the Nation's Steel Industry for many years. I have also served, not only as Chief Company Negotiator, but as Chief Industry Negotiator in collective bargaining for the Coal, Cement, Construction and Maritime industries at various times. I am responsible for collective bargaining, employee benefits, personnel, safety, industrial engineering, and labor contract administration at USX.

I appreciate this opportunity to participate in the Subcommittees' deliberations. My testimony is directed to the notice and consultation provisions contained in Part C of the bill. USX and the NAM are each concerned about the impact those provisions would have on American businesses. NAM will also submit a statement supporting the more positive aspects of H.R. 1122, contained in Parts A and B.

SUMMARY OF NAM POSITION

NAM's Board of Directors has adopted the following plant closing policy:

> "The National Association of Manufacturers considers that early notice of plant closings is beneficial in assisting the dislocated worker find new employment. NAM further finds that it is advisable for corporations to act responsibly in plant closings by providing as much notice as possible. In many cases, corporate policy and/or labor agreements set forth specific details including the length of time advance notice is to be given.
>
> "However, as each plant closing situation is unique, NAM does not see the wisdom in adopting federal legislative solutions which are punitive in nature and only serve to reduce employers', especially manufacturers', ability to compete in the world market. Acceptable public policy for the business community should focus on incentives to encourage early notice of workforce reductions rather than sanctions."

In accordance with this policy, NAM and USX each oppose Part C of H.R. 1122, which mandates punitive restrictions not only on closings but also layoffs. The bill fails to recognize that workforce reductions and plant closures occur for a variety of rea-

sons, ranging from changing consumer preference to down-turns in the business cycle which are rarely predictable on plant-specific basis and ill-suited to broad legislative restrictions. We believe the manifest objective of Part C is to attempt to legislatively repeal market forces by discouraging and preventing closings and layoffs rather than to simply provide notice to affected workers.

These provisions are punitive in nature and place cost burdens solely on employers, while doing little to help displaced workers find new jobs. We are concerned that divisive and unconstructive labor-management confrontations which have occurred in the past (in the 99th Congress with H.R. 1616, the Labor-Management Notification and Consultation Act of 1985) have simply returned for another round.

The real losers are American workers who will benefit neither from these confrontations nor from the proposed notice and consultation provisions to which we object. What the workforce needs is constructive retraining assistance to lessen the impact of closings and layoffs, not guarantees against inevitable structural changes in the economy and in the businesses in which they are employed. We believe devoting attention to how best to prepare workers to meet the challenges of changes which occur naturally would be a far better course than expending energy on issues for which consensus has not and will not be achieved. We have detailed a full range of problems with Part C in an analysis prepared by Mr. John S. Irving, Jr., a partner in the law firm of Kirkland & Ellis, and cochairman of NAM's Labor Law Subcommittee, which is attached as Exhibit I.

THE USX EXPERIENCE

A basic responsibility for any manufacturing company in any industry is the establishment of plants, technologies and products, their growth and nurture, and in some cases, inevitably their termination. A company or an industry that does not effec-

tively manage this process will inevitably recede and fail all of its responsibilities to all of its constituents. This process may take years or decades. Replacement or renewal may be economically feasible at some locations, but not at others, with both new capital and new technology, with retrained employees and with limited disruption to a community. Conversely, restructuring may inevitably involve withdrawal -- requiring relocation, downsizing or product abandonment in response to changed markets or to new products, to raw materials sourcing, to environmental conditions, and to other changed economic and political factors. The causes, the responses and the effects on employees, communities, managements, companies and the nation are so diverse that it is impossible to legislatively anticipate all these impacts, let alone insulate each employee group and their supporting organizations from the ebb and flow of change without damaging their economic prospects and outcomes in far worse ways.

USX has experienced more than its share of downsizing and reshaping in recent years. The steel industry particularly has had to fight for competitive survival via closings, merging or discontinuing plant producing units, raw materials sites, and the like over its entire history. At the same time, it also survived by constructing new steel plants, new harbors, new ships, building new technologies, research labs, developing new equipment, and opening new coal, ore, limestone, zinc, manganese, and similar facilities. To give you some sense of the magnitude of these plant closings, attached is a copy of USS Today, a magazine distributed to USX employees in advance of bargaining with the United Steelworkers of America in mid-1986. I direct your attention to page 6 which lists facilities closed just since 1980. Many more plants were closed in the 1960's and 1970's. See our USS News, July, 1982, pages 18 through 22, also attached as an Appendix.

During these same time periods, major modernizations were made within existing steel plants. Large integrated plants were also built, such as our Texas Works. USX

spent $4.6 billion on steel plant construction during the period 1976 through 1986. Page 24 of the USS Today lists some recent major facility modernizations conducted by USX. Thus, like most successful and large employers, USX has opened and closed many plants and producing units, as a basic requisite of competitive product, plant and technology requirements. Closings are expensive, many times traumatic to employees and always to investors. They are disruptive to suppliers and to customers, and closings do impact plant communities. But plant closings are as much a part of maintaining a competitive company and a competitive national economy as plant openings, new products and new technologies. To say the obvious, we have experience and have learned some things about plant shutdowns and employment terminations.

The steel industry devotes a major portion of its Collective Bargaining Agreements to employee security programs designed to deal with both short and long-term layoffs, and with plant closings. Steel plants make molten steel tailored to thousands of precise recipes for its many and varied uses by our customers. Infinite varieties of molten steel are engineered to meet ultimate end point chemistries required to furnish steel products to the specific characteristics of customer orders. We can draw steel finer than a human hair, or make it into armor plate for a super carrier. We can make it light, rigid, formable, drawable, machinable, stainless, rust-bonded, bendable or impregnable. We can use it to carry millions of tons of traffic across huge bridges or for tiny instrumentation on a space vehicle's most exquisite technology. Steel can be alloyed or pure, it can be feather-light in a beverage can or it can form the strength of skyscrapers, superdomes, and Army tanks. But, until a customer order is in hand, a steel production cycle cannot start.

Consequently, a steel plant and particularly its individual rolling mills, finishing operations, and myriad supporting activities are operated to meet erratic and diverse customer order patterns and surges. This is not by our choice! Production of

meticulous customer specs in exact chemistries, with precise metallurgical qualities, and market driven rolling, finishing, and packaging specifications mandate work scheduling to meet that uniquely positioned player in free societies market economies -- the customer. It is tough on us -- but it's great for consumers. Steel plant employees are consequently "scheduled" to work. Companies do not schedule layoffs. Each week, a work schedule is posted for next week's work. If not scheduled to work, an employee is on layoff until next scheduled to work. This pattern usually results in years of uninterrupted work but it can also mean weeks or sometimes months of layoff, depending on market demand in that employee's particular work area or product area, and on that employee's labor-contract seniority right to such work, negotiated under the labor laws adopted by this Congress.

Thus, steel markets, competition, customers, and union contracts control labor scheduling in the steel industry and they explain an extensive layoff benefit scheme, better known as the "Supplemental Unemployment Benefit Program" (SUB), which operates as an adjunct to state unemployment compensation systems.

An employee having at least two (2) years job service is provided with a SUB which gives him 26 hours of pay eligibility for each week of layoff eligibility, all on top of state unemployment compensation. An employee earns one week of SUB coverage for each two weeks of work and can accumulate a bank of 52 credit units which would cover up to a full year of layoff. If an employee has 20 years or more of service, he can increase his bank account to two (2) years of credit units.

Those employees with less than 20 years service are paid at benefit levels which depend on the financial status of the SUB Plan. The Company contributes an agreed upon sum of money per hour worked into the SUB Plan. The financial status of the plan is determined by the ratio of hours worked by the total employee group covered, versus the number of laid off employees drawing benefits. Employees who have 20 years or more of

service, moreover, are guaranteed their weekly cash benefit at 100% from general corporate funds regardless of the financial status of the plan. The SUB Plan is designed to provide a generous earnings replacement when an employee is not scheduled to work. By the way, our employees continue to accrue pension service and to receive company paid insurance coverage for medical, dental, vision and death for the full period of SUB covered layoff which can last as long as two (2) years.

If a layoff becomes prolonged, reaching two (2) years since last day worked, a longer service employee will automatically become eligible for immediate pension. Employees with age plus service equal to 80, and age 55 or older employees with at least 15 years of service, or employees with 20 years of service and a combination age plus service equal to 65, all become eligible for early retirement pensions. An early retirement pension under these eligibility rules provides an actuarially unreduced pension, regardless of age, plus an extra $400 per month on top of his regular pension until age 62. In addition, employees in retirement receives retiree medical benefits for themselves and for their eligible dependents plus retiree life insurance, for the rest of their lives.

As part of this same employment security program, steel companies provide a formal program for laid-off employees who wish to transfer to other plants within the company, payment of a relocation allowance, job search help, and out-placement counseling.

The steel industry Employment and Income Security Program is so attractive that many older, long service employees at many locations have preferred to take these shutdown benefits rather than accept work rule changes or wage reductions to keep their plants labor-cost competitive to provide on-going operations.

Page 27 of USS Today highlights a 1986 Carnegie-Mellon University analysis of the steel industry employment security program and its enormous financial cost. Attached also is an analysis by Harvard Business School Professor, William E. Fruhan, Jr., which

describes how:

> "Exit barriers and high labor costs first squeeze and then strangle mature businesses once the Economic Fairy Tale ends . . . " in highly unionized industries where collective bargaining, over decades, has produced very high employee termination costs.

As revealed by Professor Fruhan, shutdown benefits have become so costly that most such companies cannot afford to close even losing operations prior to Chapter 11 filing and/or PBGC pension takeover. Professor Fruhan's study also confirmed that the higher the exit costs in high wage industries, the more likely that their associated labor rates will also far exceed general labor costs in the nation. These same rich shutdown benefits also pull against worker mobility and discourage retraining. A laid off steelworker receiving full SUB and state unemployment benefits receives more income dollars each week than the average manufacturing employee in our country makes while working full time. A laid off steel or auto worker is unlikely to seek market-rate work while such benefits are available for not working.

The steel labor contract also includes a 90-day notice provision which provides that:

> "Before the Company shall finally decide to close permanently a plant or discontinue permanently a department of a plant, it shall give the Union, when practicable, advance written notification of its intention. Such notification shall be given 90 days prior to the proposed closure date, and the Company will thereafter meet with appropriate Union representatives in order to provide them with an opportunity to discuss the Company's proposed course of action and to provide information to the Company and to suggest alternative courses. Upon conclusion of such meetings, which in no event shall be less than 30 days prior to the proposed closure or partial closure date, the Company shall advise the Union of its final decision. The final closure decision shall be the exclusive function of the Company. This notification provision shall not be interpreted to offset the Company's right to lay off or in any way reduce or increase the working force in accordance with its presently existing rights as set forth in Section 3 of this Agreement."

After a final decision is made by the Company to close a facility, the labor contract provides additional benefits to laid off employees:

> ". . . in the event of the permanent shutdown of a plant, Company and International union representatives shall meet to determine whether appropriate Federal, State or local government funds are available to establish an employee training, counseling, and placement assistance program for that facility. If such funds are available, the Company and Union shall work jointly to secure such funds to establish a program to provide: alternative job training for affected employees for job opportunities primarily within the Steel Industry; counseling for affected employees on available benefit programs and job opportunities within the Company and the area; and job search counseling."

Clearly, the steel industry and the United Steelworkers of America have negotiated an extensive and expensive employment security program, early notification of pending shutdowns, and cooperative aid to employees seeking new employment.

However, even this expensive and comprehensive program is not as extreme or burdensome in many respects as that now proposed in the legislation under discussion here.

There are a number of critical issues in the proposed legislation that could be fatally burdensome to a steel company, and which are pragmatically unworkable given the market patterns of steel ordering and manufacturing. The size of a steel plant, the number of producing units within a plant dedicated to specialized product ranges, and the extensive variety of steel finishing units can cause normal weekly employment levels at plants to fluctuate many times higher than the 50, 100, 500 people prescribed in this legislation. During the first six months of 1986, for example, and prior to the layoffs resulting from contract negotiations, the five largest plants of USX would have been required under this legislation to develop and meet these legislated "notification" burdens 28 different times on the basis that a so-called "mass layoff" had taken place. Three of those notices would have been for layoff of over 200 people.

It is impossible to know or predict at the time an employee is first not required or scheduled at work, when he will be recalled or return to work. Steel companies already pay a significant level of income to that individual while he is laid off.

Steel layoffs, even when prolonged, do not typically constitute plant closures nor do they constitute permanent termination of employment. Almost every one of the people we so notified of layoff during the first six months last year was back to work well before July, 1986. But we had no way of knowing that in advance when they were laid off. Even the steel labor contract, negotiated with a very powerful and knowledgeable union, does not require such de-jure notifications unless and until a plant is to be closed permanently.

Before a maunfacturing plant is considered permanently shutdown and notice of pending shutdown is given, that plant typically would have had very limited or even no production in it for many preceding months or even years. The steel market is highly cyclical with long periods of either high or low demand for particular product lines. Our domestic oil and gas customers, for example, have stopped almost all new drilling in the last two years. Consequently, we are currently selling them almost no drill pipe or casing or oil-field pumps. Yet my company is certain that drilling will resume, and heavily, some time in the future.

In the late seventies, line pipe and oil country tubulars boomed for steel. How could a steel company possibly afford to write off the enormously costly steel manufacturing facilities which produce these oil country products and/or bear the shutdown costs to the affected employees, and then rebuild duplicate facilities, and hire and train a new labor force when the tubular market comes alive again, and also incur another potential liability for future shutdown benefits for the new work force when the next market turndown occurs?

Notification benefits simply tied to legally defined employment fluctuation is not sustainable in any large industry, much less those where employment is so market-driven. The uneven nature of steel employment cannot be converted legislatively into a new

tier of termination benefits without doing incalculable harm to those obligated to finance the benefits.

In cases where an employer has not been able to provide the required notice, it would be deliberately punitive and resource-wasting to require full payments to employees who perform no services and produce no product. Even very powerful unions like the Steelworkers and United Autoworkers demand only partial payment from employers for such layoff periods. But these existing and generous levels of payment would now be raised to new cost levels by the requirements of this proposed legislation. Our product cost, already carrying the highest wage rates in the world would thus be made less competitive.

The proposed legislation would cover employees with as little as six (6) months job service. That's unbelievable! A brand new employee with such a short period of work and with maximum social and labor mobility has surely not earned job benefit commitments from his plant or employer, after having invested so little time in the enterprise. Our experience in steel is that a substantial percentage of these short-service employees would leave our company within three to five years. Even a union with the leverage of the Steelworkers has not seriously pursued SUBs for short-term layoffs for employees with as little as two (2) years service or less. Even a steelworkers currently must have at least three (3) years service to qualify for severance allowance.

The proposed legislative requirement that employers provide information to, and consult with, employee representatives before acting on a closing or layoff is an open-ended obligation, broadly defined, and therefore a guaranteed opportunity to exploit, litigate, and endlessly delay a proposed closure. If an employer is also forced to continue paying employees during these "consultation" periods, employee representatives will find unlimited ways to claim inadequate information, to argue

unwillingness on the part of the employer to consider alternate proposals, and to find infinite schemes to institute delaying litigation. Only someone who has never been out "where the rubber meets the road" in labor contract administration would not know that. All the incentive for affected employees and particularly their union representatives under this bill will be to delay agreement and thus prolong full pay for a plant that has no work for them.

This legislation, as proposed, requires employers to consult for the purpose of "agreeing" to a mutually satisfactory alternative or a modification of the proposed layoff or closing. How can people be mandated by legislation to "agree," particularly when under that legislation, disagreement will be subsidized for one party by the other? What is the effect of agreements to agree? Our experience in a great number of shutdowns suggests the futility of such a requirement. In only two cases in recent years, after consultation with the Steelworkers, have we decided to continue operations originally scheduled for suspension. Each of them continued thereafter to incur heavy financial losses and subsequently were shut down.

The structure of the proposed legislation would open the door to extended litigation over challenges of a company's willingness to bargain concerning alternatives or modifications. Because shutdowns are painful financially to a company, quite apart from their obvious impact on employees and communities, extensive research and evaluation of alternatives always precedes and is greatly preferred by any company to the financial and organizational costs of shutdown. It is highly remote that another legislatively mandated round of consultations will somehow develop an acceptable alternative after exhaustive attempts have already proved unavailing.

As often as not high employment costs are a major contributor to shutdowns. Is a local union which refuses to moderate them to avoid shutdown now going to forego contract termination benefits for its members merely because of a new legislatively

imposed delay? Will employees do so particularly when continued impasse means continued subsidy? To ask the question is to answer it. This requirement appears to be primarily a device to retard the shutdown process to the great economic disadvantage of the enterprise and ultimately to the jobs of all the others who depend on that enterprise.

The requirements to include local government in the information disclosure and consultation process is another invitation to multiplied conflict and extended delay. Every community and its local government representatives are temporarily disadvantaged when a company expresses an intention to close a plant. Local government officials, typically, will not be a neutral or balanced voice in this temporary period of conflict between the company and plant employees. These officials will react in the same manner as employees, that is, seek to retain revenues from the company as long as possible. No one gives up their income without a fight. Government should obviously make its structural services available to a plant and its local employees in these matters, but it should not be empowered to act as a legislatively established participant in plant closure decision-making. Company and employee representatives are the prime parties affected and should be free to consult government, seek government guidance and support services as they see useful. Government should be available to assist employees if a shutdown decision is finalized. Any other behavior for government is likely to chill further investment in that community, and further handicap its competitive manufacturing climate.

A requirement to publicly declare a plant shutdown, from 90 to 180 days in advance of the closure, is not without significant risk. Customers do not have to provide 90, let alone 180, days notice of order cancellation or of changing suppliers or of simply cutting their order volumes or their price offerings. When any shutdown announcement is so made, customers will immediately seek new sources of supply and cease ordering

any items that require substantial lead time. Suppliers will tighten credit terms for shipments to that plant, lenders may downgrade the company's credit rating if that plant is a major part of the company's producing facilities, and the market value of the company's stock will likely decline. Shutdown pressures or pinch-points in the life of a business are often successfully surmounted, but if public announcement is required months in advance, the announcement itself can easily become a self-fulfilling prophecy. Six months may make a competitive difference to a company attempting to fend off tough competition. The notice requirement itself could be a large advantge to that competition.

We note that the Report of the Brock Task Force on Economic Adjustment and Worker Dislocation argues that there is no evidence that productivity declines during a period of shutdown notice. That seems doubtful to us, based on our experience. I question whether any company, so affected, has a reliable measure of productivity for a measurement period that short at a plant which is closing its operations. When closing comes, in-process inventories are being drawn down, equipment is not maintained, supplies are not restocked, and so forth, all of which can give a statistical appearance of productivity gain on superficial inquiry or unsophisticated measurement. Anyone who has managed large groups of workers knows first hand that uncertainty immediatley hurts productivity as workers react to these changes, contemplate their future, vent their frustration, lose concentration, and devalue company loyalty. Injury risk tends to increase. Product errors increase. Claims that productivity will improve or even hold steady in these situations is highly suspect. And, I say that based on a lot of shutdown experience in many areas of our diverse business segments.

The customer, the banker, the investor, and our competitors, however, all have reactions far more important than productivity measurement when orders decline and a

plant struggles to maintain competitive production costs against mandated shutdown notice long in advance of a proposed actual closing.

It is not insignificant that some of the largest unions demanding government protection from imports are also leaders in this effort to require mandated notification of plant shutdown and layoffs, as well as new economic transfer payments in the bills under consideration. These largest, most powerful unions in this country have negotiated very high-cost employment security programs for idle employees or idled facilities. Employees represented by these large unions have employment costs far above the all manufacturing average in this country and are among the elite labor groups in the world. If large unions can now expand their benefits still further through legislation as proposed here, then they can concentrate all of their collective bargaining muscle on even higher wage demands and do so with the knowledge that the Congress will provide the rest of their benefit package.

Collective bargaining involves resource-allocation and if employees want to use more of their share of wage income as shutdown benefits, they may bargain to do so. No prioritizing by employees or their unions is required, however, if the Congress orders additional benefits for them by means of legislation. Who will provide the funds for these legislative benefits if wages are not offset to pay for them? Will the government next say "Pay More!"--in a dozen different benefit areas--not just one? More companies and more industries will become less competitive economically, as is the case today in steel and auto, if Congress orders additional benefits without wage offsets. Is this the right direction for our economy--to legislate higher employment costs and then force the transfer of that cost over onto consumers via restraints on imports? Can we cut off overseas auto, steel, and telecommunications and other product competition while Congress legislates higher costs onto domestic producers of those products? Will consumers accept that? Can Congress guarantee the trade protection side of the

equation needed to support this proposed cost side? It surely has not been willing or able to do so thus far, despite massive bankruptcies in Steel.

The Brock Task Force indicated that most large companies already provide early notice of impending plant shutdowns and then also provide a wide range of economic protection for their affected employees. Certainly that is the case in steel, auto, aerospace, aluminum, chemicals, oil, and many others. The writers of the proposed legislation were quick to lift out only those sections of the Brock Task Force Report that fit their objectives--they chose to ignore the central issue as to the nature of the problem they wish to address, i.e., the Task Force spent considerable time and found substantial disagreement as to the nature and magnitude of the unemployment problem caused by plant shutdowns, but there was little or no disagreement that the problem was not one of large businesses.

It is obvious, however, that this legislation is aimed at improving the lot of big unions by further cost-handicapping large basic industry employers. Further, we do not believe that the advance notice and consultation requirements are necessary, desirable, reasonable or workable for any business regardless of its size. Can this country afford to further increase production costs for beleaguered basic industries now closing their high cost plants as customers order elsewhere? Will making our costs still higher support long-term employment prospects?

Do we need controversial legislation which increases cost and helps hastens plant closings, or do we need legislation which helps people to build, and maintain and invest in plant openings? -- Do we need more expensive plant funerals or more healing cost medicine for imperiled manufacturing in our high-cost society?

This legislation is simplistically conceived even if good-hearted in its intention. We believe there are considerable values in Part A of H.R. 1122, but we believe Part C, advance notice and consultation, for the reasons we have stated here, and for

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those elaborated in the addenda, should be eliminated entirely.

CONCLUSIONS

In the foregoing, I have tried to share with the Subcommittees the experiences of USX, a large diversified corporation, where plant closures and layoffs are handled pursuant to collectively bargained or equivalent employment security programs.

From the general perspective of NAM member companies, each plant closing and layoff situation is unique, and inflexible mandatory notice and consultation requirements cannot be met in all cases. Companies that are signatory to labor agreements comply with its terms and provide collectively bargained notice periods. Smaller firms, just as much as their larger counterparts, cannot predict their economic outlook months in advance. Large and small manufacturers', whether union or non-union, are each subject to countless shifts in employment as part of countless swings in business cycles, products and external factors. Manufacturers only work when there are orders to fill.

Plants open and close and workers are recalled and laid off for many reasons. They include product and plant obsolescence, domestic and foreign competition, changing technologies and consumer preferences, increased costs, sales, mergers and acquisitions, divestiture, government actions like deregulation, changing business conditions, the loss of a customer or supplier, loss of a government contract and many others.

These are but a few of the requirements of the marketplace and the global environment in which U.S. manufacturers and other businesses must compete. We should remember that the United States is currently experiencing a prolonged economic expansion, and continues to generate jobs at a rate envied throughout most of the world.

We believe that the best way to meet the challenge of structural change and the dislocations it creates is through job creation, improvement in competitiveness, and

preparation of workers for change through training and skills development. We believe that the notice and consultation provisions of H.R. 1122 are unnecessary, harmful, and unworkable in the manufacturing setting, and should be rejected by the Subcommittees and the Congress.

I will be pleased to answer your questions.

ADDENDA TO
TESTIMONY OF
J. BRUCE JOHNSTON

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March 16, 1987

Randolph M. Hale
Vice President, Manager
of Industrial Relations Department
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Dear Randy:

The bill entitled the "Economic Dislocation and Worker Adjustment Assistance Act" was introduced in the House of Representatives by the Chairman of the House Labor Subcommittee on Labor-Management Relations, William Clay, and other co-sponsors on February 18, 1987. The bill, H.R. 1122, contains a variety of dislocated worker training and assistance programs and is promoted by its sponsors as a means of helping dislocated workers and promoting American competitiveness.

Part C of H.R. 1122 is entitled "Labor-Management Notification and Consultation." This portion of the bill is a finely tuned version of H.R. 1616, a "notice and consultation" bill defeated in the House of Representatives in November of 1985.

The bill (Sections 302(b)(1)(A) and (B)) declares that "adjustment efforts" should begin in advance of a plant closing or mass layoff rather than afterward, "thus minimizing disruption in the workers' lives." Advance notice, according to the bill, is required to permit time for "research and planning."

In fact, these relatively bland references concerning the need for advance notice do not begin to tell the real

story of the bill's notice and consultation requirements or the difficulties they would cause for employers and their ability to compete. Rather than perpetuating America's competitive edge, the notice and consultation provisions of H.R. 1122 virtually guarantee that American employers will become less, not more, competitive.

Despite statements in the bill itself that advance notice of closings and mass layoffs is needed to permit adjustment efforts and research and planning, the real focus of these provisions is to prevent closings and employee terminations. The bill accomplishes this objective by mandating a lengthy and cumbersome notice and consultation process designed to change employers' minds or to introduce such high risks for employers that they will abandon thoughts of closings or layoffs altogether.

In fact, adjustment efforts, research and planning, and effective deployment of dislocated worker services, are no where mentioned in the bill's notice and consultation provisions. Instead, there are requirements of up to six months notice of closings and layoffs, mandatory procedures for consultation with unions and other employee representatives and local government officials about "alternatives" to the course proposed by the employer, and onerous and detailed information disclosure requirements with which employers must comply. In addition, the bill's notice and consultation requirements create backpay and benefit liabilities for employers, subject them to fines and penalties of local governments, and encourage additional state and local plant closing and layoff restrictions and penalties even more onerous than the proposed federal restrictions.

Part C of H.R. 1122 is essentially the same as Title II of the Senate companion bill S.538. The wording of the notice and consultation provisions of the two bills is nearly identical except in two significant respects which make H.R. 1122 even more objectionable than S.538. Unlike S.538, the House bill fails to limit the number of "local governments" which an employer must notify and with which it must consult. This leaves open the possibility that an employer "proposing" to close or layoff employees may be required to notify and consult with multiple layers

of state, county, an even city governments. In addition, H.R. 1122 appears to authorize lawsuits to collect $500 per day fines by a state "dislocated worker unit" or a "unit of general purpose local government". This leaves open the possibility that multiple $500 per day fines could be collected by more than one state entity, depending upon how "unit of general purpose local government" is defined.

A review of Part C of H.R. 1122, unlike the bland statements of its sponsors about its contents, leaves little doubt that employer mind changing, and closing and layoff prevention, are the real objectives of the bill's advance notice and consultation requirements. Enormous leverage for preventing terminations is bestowed upon unions and local governments. Management objections to similar notice and consultation provisions of earlier bills, notably the defeated H.R. 1616, have been largely ignored.

Labor and management coexist within the delicate balance struck by the Federal labor laws. When that balance is fundamentally upset, serious consequences for management, labor and the public, inevitably result. The plant closing and layoff restrictions of H.R. 1122 interfere with that balance in many obvious ways. Clearly unions, not employers, are the intended beneficiaries of that interference in the case of the notice and consultation provisions of H.R. 1122. Far from promoting labor-management cooperation, those provisions virtually assure new labor-management confrontations and prolonged legal battles. Even the legislative debate over these proposed restrictions promises to polarize labor and management and will be more destructive of labor-management cooperation than any debate since the defeat of "Labor Law Reform" in 1978.

In short, the bill contains overly restrictive plant closing and layoff requirements, and glaring conceptual, procedural and mechanical flaws, which render its notice and consultation provisions unwise and unworkable. As a consequence, the business community should vigorously oppose the bill's enactment. To do otherwise is to jeopardize any competitive edge American businesses currently enjoy, and, in the long run, the jobs of American workers.

KIRKLAND & ELLIS

In reviewing the advance notice and consultation provisions of H.R. 1122, I have prepared comments on many of the bill's more objectionable and destructive requirements. Those comments are enclosed for your review.

Sincerely,

John S. Irving
NAM Special Counsel,
Plant Closing Matters

A Management Review of Part C of H.R. 1122
the "Economic Dislocation and Worker
Adjustment Assistance Act"

PART C - LABOR-MANAGEMENT NOTIFICATION
AND CONSULTATION

SEC. 371. DEFINITIONS.

As used in this part --

(1) the term "employer" means any business enterprise in any State that employs --

(A) 50 or more full-time employees; or

(B) 50 or more employees who in the aggregate work at least 2,000 hours per week (exclusive of hours of overtime).

Comments:

This definition of "employer" includes private sector employers covered by the National Labor Relations Act, including construction employers. It also includes railroads, airlines and "business enterprises" of state, local, and perhaps even the federal, governments.

Since the term "employee" is not defined, managers and supervisors also would be considered "employees." Thus, an employer of 40 hourly employees and 10 managers and supervisors would be covered. Therefore, employers of fewer than 50 "employees," in the usual sense, are covered.

(2) the term "plant closing or mass layoff" means an employment loss for 50 or more employees of an employer at any site during any 30-day period, except as provided in section 7(c).

(5) the term "employment loss" means (A) an employment termination, other than a discharge for cause, voluntary departure, or retirement, (B) a layoff of indefinite duration, (C) a layoff of definite duration exceeding 6-months, or (D) a reduction in hours of work of more than 50 percent during any 6-month period.

Comments:

In the sale of a plant (e.g., an assets sale), employees are normally "terminated" by the seller. Such a sale, therefore, technically could result in an "employment loss" and trigger the bill's notice and consultation requirements, even if all of the seller's employees were hired by the buyer. An employer of 500 or more employees could be required to give 180 days advance notice of a sale; an employer of 100 employees, 90 days notice; and an employer of more than 100 and less then 500 employees, 120 days notice. The prospective seller could then be required to consult in good faith with unions or employee representatives and public officials during the notice period "for the purpose of agreeing" to alternatives other than a sale.

The notice and consultation requirements are triggered by an employment loss at any site. 1/ A covered employer could be required to give notice and consult if its actions would cause an employment loss on any site, even if the affected employees were employed by another employer. For instance, a covered general contractor (i.e., an "employer") who intends to terminate a subcontractor (i.e., another "employer") on a construction site would have to give notice and consult if the contractor's action would result in termination of 50 or more "employees" of the terminated subcontractor. The covered subcontractor also would be required to give notice and consult. The same requirements also could apply to covered "employer" customers and suppliers seeking to terminate business relationships with one another. In short, while all of these consultations are going on, needed management action would be postponed.

1/ Section 355(a) authorizes private lawsuits against employers for backpay and lost benefits resulting from the failure to notify, or consult. Where there is or will be an employment loss of two or more groups of less than 50 employees, which in the aggregate equal or exceed 50 employees, it is the employer's burden to "demonstrate" (i.e., prove), that losses by the separate groups (e.g., at different locations), resulted from "separate distinct actions and causes and are not an attempt by the employer to evade the requirements of this Act." Section 355(d). Therefore, employers can expect lawsuits even though job losses at any particular site do not exceed 50 employees.

Layoffs of definite duration are covered if layoffs exceed 6 months. However, all layoffs of 50 or more employees for an "indefinite duration" require advance notice and consultation. 2/ Thus, a covered employer who wishes to layoff 50 or more employees for less than 6 months must announce a definite reemployment date or be prepared to give advance notice and consult. If a definite recall date is given within 6 months (e.g., 4 months hence) and laid off employees are not recalled on that date, the employer may be liable for backpay and penalized by fines because, after all, the layoff turned out to be "indefinite." No specific exceptions are made for industries like the construction industry where workforces and work hours on larger projects expand and contract with frequency. Neither is there any exception for an employer crippled by a strike who must permanently close a plant or layoff employees.

(4) the term "affected employees" means employees who have been employed by an employer for more than 6 months and who may reasonably be expected to experience an employment loss as a consequence of a proposed plant closing or mass layoff.

Comments:

The bill's notice and consultation provisions are triggered when 50 or more "employees" will lose employment at any site during a 30-day period. However, only unions and representatives of "affected employees" must be given notice. Likewise, consultation is with unions and representatives of "affected employees," i.e., those employed by an employer for more than six months. Therefore, if 20 employees with less than 6 months employment and 30 employees with 6 months or more employment are to be terminated or laid off, an employer apparently only need give notice and consult with respect to the 30 longer-term employees.

Another possible interpretation of the bill is that "affected employees" means those who have been employed for at least six months by any employer. The

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2/ Section 371(2) excepts from the term "plant closing or mass layoff" employment losses "provided in section 7(c). Since there is no section 7(c), it is unclear what the exemption refers to.

bill states that "affected employees" are those employed by "an employer" who may reasonably expect to experience an employment loss. It does not say that their 6 months or more of employment must be with the employer who proposes to lay them off. Thus, such affected employees would be entitled to notice and consultation rights if employed by a number of employers for a total of six months or more even if employed by the employer proposing to lay them off for only one day.

These ambiguities are examples of poor draftsmanship and lack of specificity which would cause enormous compliance uncertainties for employers and generate costly burdens for them and for courts. In the meantime, employers wishing to layoff employees for legitimate economic reasons will be stymied in their efforts or, perhaps as intended, will abandon their layoff plans altogether.

Another serious uncertainty is caused by the term "affected employee." It means not only employees actually affected, but also those "who may reasonably be expected" to experience an employment loss resulting from a proposed plant closing or mass layoff. Employers, naturally, will tend to err on the side of giving notice to larger groups of employees in order to avoid skipping those who later may turn out to be "affected." However, if the employer overestimates, it could wind up consulting with representatives of groups improperly diluted by unaffected employees and, thus, may consult with representatives of the wrong groups. Uncertainties created when different representatives claim to represent competing groups of "affected employees" will lead to mass confusion over who represents whom. Again, the employer will be discouraged from doing anything at all, or if he acts, may face stiff fines and backpay penalties and watch what is left of his anticipated savings be consumed by attorney's fees.

(3) the term "representative" means --

(A) an exclusive representative of employees as determined under the National Labor Relations Act (29 U.S.C. 141 et seq.) or under the Railway Labor Act (45 U.S.C. 151 et seq.); or

(B) in the case of employees not so represented, any person elected by employees to represent them for purposes of the notice or consultation requirement under section 353.

Comments:

Representative means "exclusive representative of employees as determined" under the NLRA or RLA. It is unclear whether this means "certified" representative or a representative "designated" by union authorization cards, or a designated representative seeking to establish exclusive representative status through, for instance, an NLRB election or bargaining order. What if an employer proposes to close during a union organizational drive, but before a scheduled NLRB election or certification? Must the notice and consultation process await the outcome of the NLRB election? What if the results of that election are challenged?

If there is no "representative," one is to be chosen under Section 353(c) through an "expedited" state proceeding. Where no representative has been chosen because an NLRB election proceeding is incomplete, it appears that state "expedited" selection procedures would take over, perhaps in mid-stream.

While the entire representative selection process is going on (federal and/or state) there will be uncertainty about who should receive notice, and the consultation process will be delayed while representatives of "affected employees," or "reasonably" affected employees are being selected, or differences among competing groups of affected employees are being resolved by the NLRB, state authorities, or both. In the meantime, the employer has no idea with whom he should be consulting, whether he should be consulting at all, or what will happen if he fails to consult with someone. The bill's substantial fine and backpay penalty provisions can be costly for the employer who makes mistakes. While representational issues are being sorted out, business opportunities, including sales, will be lost and business losses will result because employers will be afraid to take needed action.

These and other uncertainties appear consciously built into the bill to dissuade employers from taking any actions at all with respect to layoffs. Lawyers will benefit, the courts will be burdened, business owners will suffer from inability to respond to business needs, and owners, creditors, consumers, customers, suppliers, and employees, will be the losers in the long run.

Apparently unwittingly, the bill's sponsors have created a notice and consultation process which exposes

unions to enormous liabilities. Under the bill, unions are required to consult as representatives of "affected employees," i.e. employees employed for six months or more. Under the NLRA and the RLA, unions owe a statutory "duty of fair representation" to all employees in the bargaining unit, including those employed for less than 6 months. If a union consulting during the notice period on behalf of "affected employees" proposes "alternatives" which harm other unit employees with less than 6 months employment, the Union will be placed in an impossible conflict-of-interest situation and will be exposed to law suits for breach of the statutory duty of fair representation.

Unions face the same conflicts of interest and liability exposure if they fail to represent "affected employees" with a single-minded purpose despite adverse effects upon "unaffected employees" whom they also represent, i.e., those employed for less than 6 months. Similar conflicts will arise where, for instance, a union represents employees at two plants of the same employer, one which will lose work and jobs because of a proposed work relocation and the other which stands to benefit from the acquisition of relocated work. The interests of employees at the two locations will be in conflict, and the union with fiduciary responsibilities to both employee groups will be caught in the middle. Even where unions in good faith attempt to balance interests of competing employee groups, the costs of defending duty of fair representation lawsuits will be enormous.

SEC. 352. NOTICE REQUIRED BEFORE PLANT CLOSINGS AND MASS LAYOFFS.

(a) An employer shall not order a plant closing or mass layoff until the end of a period specified under subsection (b) after the employer serves written notice of a proposal to issue such an order --

(1) to the representative or representatives of the affected employees with respect to such order or, if there is no such representative, to each affected employee with respect to such order; and

(2) to the State dislocated worker unit (established under Part A of this title) and to the chief administrative officer of the unit of

general purpose local government within which such closing or layoff is to occur.

Comments:

A notice of plant closing or layoff must not be framed as an "order" but, rather, as a written notice of a "proposal" to issue such an order.

By requiring pre-decisional notice and consultations over plant closings and layoffs, Part C of H.R. 1122 is designed to overrule the Supreme Court's 1981 decision in First National Maintenance Corp. v. NLRB, 452 U.S. 666. In that case the Court held that an employer is not obligated to bargain over an economically motivated decision to close part of its business, but is required to bargain concerning the effects of that decision. Speaking for seven Justices, the majority opinion of Justice Blackmun states that a decision to partially close has its focus on economic profitability, "a concern under these facts wholly apart from the employment relationship . . . involving a change in the scope and direction of the enterprise, [which] is akin to the decision whether to be in business at all . . ." 452 U.S. at 677:

> Management must be free from the constraints of the bargaining process to the extent essential for the running of a profitable business. It also must have some degree of certainty beforehand as to when it may proceed to reach decisions without fear of later evaluations labeling its conduct an unfair labor practice."

452 U.S. at 678-679.

It is clear that H.R. 1122 requires notice of a "proposal" to layoff employees or close plants at the pre-decisional stage. Similarly, "good faith" consultations must be conducted at this pre-decisional state, i.e., before any "order" of layoffs or closing is issued. Obviously, such requirements are intended to reverse the Court's First National Maintenance holding. There is little practical difference between good faith "consultations" under the bill, and good faith "bargaining" under the NLRA. It also is clear that proposals to layoff employees or close plants are required subjects for notice and consultation whether or not

those proposals are related in any way to labor costs. Thus, pre-decisional notice and consultations are required even in the case of fundamental business judgments like the discontinuation of an obsolete product line, as long as those judgments may result in plant closings or layoffs. These are precisely the kinds of judgments which the Supreme Court concluded "must be free from the constraints of the bargaining process to the extent essential for the running of a profitable business." 452 U.S. at 678-679. The Court's practical observation, therefore, would be nullified by Part C of H.R. 1122.

The employer must "serve" notice upon the "representative or representatives" of affected employees or upon each affected employee "if there is no such representative." These notice requirements raise all of the same problems of determining the identity of the proper "affected employee" group and their "representative or representatives" as discussed above.

Notice also must be served upon the state "dislocated worker unit" and "the chief administrative officer of the unit of general purpose local government within which such closing is to occur." Just what a "unit of general purpose local government" is, is unclear. This could mean that many government notices are required e.g., state, county and city. Neither is the meaning of "general purpose" local government clear.

The "proposing" employer's decisions with respect to who gets notice had better be correct. If not, notice will be ineffective, and the employer will be required to return to square one or will be subject to the bill's penalties.

(b) For purposes of subsection (a), the periods described in this subsection shall be --

(1) a 90-day period in the case of a proposed plant closing or mass layoff involving not fewer than 50 nor more than 100 affected employees;

(2) a 120-day period in the case of a plant closing or mass layoff involving more than 100 but fewer than 500 affected employees; and

(3) a 180-day period in the case of a plant closing or mass layoff involving 500 more affected employees.

Comments:

During these extended notice periods, up to 6 months, employers will lose customers and suppliers, as well as skilled employees who will take the other jobs without waiting for the results of "consultations." Even If consultation persuades the employer to abandon its layoff or closing plan, the business will be severely handicapped by those losses.

(c) An employer may order a plant closing or mass layoff before the conclusion of the applicable period described in subsection (b), if unforeseeable business circumstances prevent the employer from withholding such closing or layoff until the end of such period.

Comments:

This notice reduction provision at first glance appears to provide relief from extended notice requirements when warranted by business necessity. However, closer examination reveals that relief, at least for employers, is neither the intention nor the effect of this provision.

First, business circumstances must actually "prevent" the employer from delaying the closing or layoff order until the end of the full notice period. Second, such circumstances must, in fact, be "unforeseeable." Employers seeking to shorten the notice period obviously will be running great risks. They may succeed in clear cases where, for instance, an entire plant has been destroyed by fire. Employers may not succeed in shortening the period, however, where their financial resources or the resources of their parent companies would permit postponement of the closing or layoff order for the entire notice period. Even if waiting would mean financial ruin, it could be argued that ruin was "foreseeable" and that the notice, therefore, should have been given earlier.

Again, the employer had better be "right," given the substantial liabilities and penalties authorized by the bill. This escape clause may provide no escape at all, and its ambiguity is likely to discourage its use altogether.

SEC. 353. CONSULTATION REQUIRED BEFORE PLANT CLOSINGS AND MASS LAYOFFS.

(a) An employer shall not order a plant closing or mass layoff unless the employer, upon request --

(1) has met at reasonable times with the representative or representatives (if any) of the affected employees and the unit of general purpose local government with respect to a proposal to order a plant closing or mass layoff; and

(2) has consulted in good faith with such representative or representatives for the purpose of agreeing to a mutually satisfactory alternative to or modification of such proposal, but this requirement to consult shall not compel an employer to agree to such an alternative or modification.

Comments:

This is one of the trickiest and most objectionable provisions in the entire bill. The "proposing" employer must meet with representatives of employees and "general purpose" local governments at "reasonable times" and consult in "good faith." This may sound innocuous, but it is not.

A closing or layoff will be unlawful and will result in substantial employer liabilities and penalties unless employers can prove that they have consulted "in good faith." And that is not all. Employers must prove that they have consulted in good faith "for the purpose of agreeing" to alternatives to the very actions they propose to take.

Literally thousands of NLRB cases over the years have centered upon the issue of whether employers have bargained in "good faith." When litigated, these cases are lengthy and costly for the employer and the public. Has the employer entered bargaining with a "locked mind" and with "no intention of reaching an agreement?" Has he engaged in "surface bargaining?" Was the employer's offer the kind that "no self-respecting union" could accept? Did he insist to impasse on "non-mandatory" bargaining subjects? Did the employer withhold information which the union needed in bargaining? Did he commit other unfair labor practices during

bargaining which demonstrate that his bargaining was in "bad faith?"

These are but a few of the theories which have embroiled employers in NLRA litigation about the duty to bargain in "good faith." This bill contains the additional onerous requirement that employer good faith consultations be "for the purpose of agreeing" to alternatives to the proposed closing or layoff. Employers will be unable to prove that they consulted in "good faith" unless they also can prove they approached consultations for the purpose of "agreeing" to alternatives they rejected during their planning processes.

Thus, to the untrained ear this consultation provision may sound deceptively benign. To any ear trained in labor relations matters, however, the "good faith" consultation requirement is an artfully worded trap for employers. It can only be concluded that this trap was intended -- a trap which, like others contained in the bill, will discourage employers from resorting to closings and layoffs at all. The good faith consultation requirement has little to do with making employers more competitive.

It is true that the provision contains some vague assurances: Good faith consultation is for the purpose of agreeing "to a mutually satisfactory" alternative, and the "requirement to consult shall not compel an employer to agree to such an alternative or modification." However, such vague assurances are little comfort to employers who will put to the subjective proof that they consulted in good faith "for the purpose of agreeing" to mutually acceptable alternatives. In fact, thousands of NLRB cases dealing with good faith bargaining issues have been generated in spite of the same assurances. Under the NLRA, collectively bargained agreements must be "mutually acceptable" too, and Section 8(d) of the NLRA "does not compel either party to agree" either.

(b) An employer's obligation to consult as required by subsection (a) of this section commences on the date such employer serves the notice required by section 352(a) and continues until the end of the applicable period described in section 352(b), unless earlier terminated with the consent of the employer and the representative or representatives of the affected employees and the unit of general purpose local government.

Comments:

The consultation obligation continues throughout the entire notice period. Thus, unlike the NLRA, the concept of "impasse" is excluded from the consultation requirements of H.R. 1122. An employer must continue to meet and consult with representatives of various employee and governmental groups until the very last day of the notice period -- whether or not those representatives have any constructive alternatives to offer. And, throughout the notice period, the employer must convincingly consult "for the purpose of agreeing" to alternatives. If an employer even suggests, as he is permitted to do under the NLRA, that consultations appear to have reached impasse, he may be unable to prove later that he consulted in good faith throughout the entire notice period.

Consultations will be with representatives of one or more employee groups and with governmental representatives simultaneously. Nevertheless, the employer must be prepared to consult with any and all of these representatives at whatever "reasonable times" they request throughout the notice period. One can imagine the mass confusion, and exhaustion, which will result, particularly toward the end of the notice period when union and government representatives finally begin lowering their expectations and demands.

The provision which allows the consultation period to be shortened by mutual agreement between the employer and various employee and governmental representatives is of little practical value. It requires that all the representatives agree with one another and the employer and, therefore, is unlikely to come into play unless the employer has capitulated to the demands of all representatives.

(c) Each State dislocated worker unit shall establish, for purposes of the consultation requirement under subsection (a)(2), expedited procedures for the selection of representation by employees not otherwise represented by an exclusive representative of employees as determined under the National Labor Relations Act (29 U.S.C. 141 et seq.) or the Railway Labor Act (45 U.S.C. 151 et seq.).

Comments:

When employees are not union represented "as determined" under the NLRA or RLA, expedited state "procedures" will be established "for the selection of representation by employees." It should be noted that these state procedures are not legislated, but rather are formulated by each "State dislocated worker unit." The governor of each state will "designate or create" such "units." (Section 305(a)(1)).

Obviously, then, the powers of state "dislocated worker units" will be considerable, especially since they will be deciding questions of employee representation. How representation disputes will be resolved, as described earlier, is guesswork, as are questions of whether unions may apply for selection and what will happen if the NLRB is mid-stream in its own procedures for the selection of an exclusive bargaining representative.

Accordingly, the entire state expedited selection procedure is fraught with potential contradictions and uncertainties apparently left by the bill's drafters to the parties and the courts to figure out. In the meantime, however, the confusion inherent in these selection procedures will act as a deterrent to terminations and layoffs by employers caught between business exigencies and the financial penalties and lawsuits authorized by the bill.

SEC. 354. DUTY TO DISCLOSE INFORMATION DURING CONSULTATION.

(a)(1) An employer shall be held to have failed to consult in good faith under section 353 if the employer has not, upon request and in a timely manner, provided the representative of the affected employees or the unit of general purpose local government concerned with such relevant information as is necessary for the thorough evaluation of the proposal to order a plant closing or mass layoff or for the thorough evaluation of any alternatives or modifications suggested to such proposal.

(2) The information referred to in paragraph (1) shall include --

(A) the reasons and basis for the decision to order a plant closing or mass layoff;

(B) alternatives that were considered and the reasons the alternatives were rejected;

(C) plans with respect to relocating the work of the facility where employment loss is to occur;

(D) plans with respect to the disposition of capital assets; and

(E) estimates of anticipated closing costs.

Comments:

The entire information disclosure section of H.R. 1122 is another calculated trap for employers. The bill requires the disclosure of information, and the duty to disclose information is included specifically as an element of the employer's "duty to consult in good faith." In other words, an employer fails to comply with the duty to consult if he fails to supply all "relevant" information requested by unions or other employee or local government representatives. A failure to supply but one "relevant" document could result in a court determination years later that the employer failed to consult in good faith, with accompanying fines, penalties, and backpay liability.

Such cases under the NLRA are commonplace. Unions routinely use information requests as a bargaining tactic. If they make a broad enough information request, and an employer is mistaken in its belief that the information need not be disclosed, the employer's otherwise good faith bargaining is "tainted" by its "bad faith" refusal to supply information. The refusal to disclose invalidates a good faith bargaining impasse which allows an employer to implement unilaterally its last bargaining offer. An unlawful refusal to supply information converts an "economic strike" into an "unfair labor practice" strike which, in turn, guarantees that strikers will be entitled to displace striker replacements when they decide to end their strike and return to work.

There is ample room for the same tactics during the good faith consultations required by H.R. 1122. Unions and other representatives will demand greater and greater access to employer books, records, internal memoranda, studies, and the like. The same demands will be made upon the employer's parent company if one exists. If the employer or its parent refuses or fails to supply some piece of arguably relevant information, the entire consultation process could be tainted and any closing or layoff which follows would be unlawful.

The employer must supply all relevant information necessary for a "thorough evaluation" of the proposed layoff or closing. In addition, however, the employer must supply all relevant information necessary for a thorough evaluation "of any alternatives or modifications suggested" by any employee (union) or government representatives. "Suggested" alternatives need not be "reasonable," and it makes no difference if those "alternatives" are completely unacceptable to the employer. By merely "suggesting" new alternatives, employee and government representatives can require employers to embark on a new hunt for all information relevant to a "thorough evaluation" of that "alternative." One can only imagine the employer frustration and wasted resources these tactical requests will generate. But if the employer fails to comply, it will be exposing itself to fines, liabilities, and lawsuits for failing to consult in "good faith."

The bill includes examples of information deemed relevant and which therefore must be produced. The list is only illustrative, and the outside limits of "relevant" information will be limited, as a practical matter, only by the imaginations of union and

representatives' attorneys in formulating discovery demands. Accountant and consultant reports dealing with a proposed layoff or closing, as well as information about other alternatives already studied and rejected by the employer, may be relevant and therefore disclosable. It is not even clear that the attorney-client privilege would insulate advice obtained by the employer from its attorneys concerning the proposed layoff or closing.

(b) The information an employer discloses to an employee representative or a unit of general purpose local government under subsection (a) shall be subject to such protective orders as the Secretary may issue, on petition by the employer, to prevent the disclosure of information by such representative or any employee which could compromise the position of the employer with respect to its competitors.

An employer may petition the Secretary of Labor for a "protective order" to prevent disclosure of information by a union or other employee representative or by a local government, which could compromise the position of the employer with respect to its competitors. What happens while the employer is applying to the Secretary for such an order is unclear. This whole "petition" process is uncertain. The Secretary may or may not "issue" the protective order and will have to determine its scope. While the Secretary is deciding what to do, it is not clear whether the employer may withhold the requested information. If not, what happens if the information is made public before the Secretary acts? If the employer withholds information pending action by the Secretary, what happens with respect to the notice and consultation period? Does it keep running or is it suspended? The bill gives no guidance on such issues and, as a result, adds substantial uncertainties to the entire process for the employer -- another incentive for the employer to abandon its "proposed" course of action.

To add to the difficulty, it is not clear whether the Secretary actually issues the protective order or whether the Secretary must apply to a court for such an order. If the Secretary issues the order, it would still have to be enforced by a court. If the Secretary has to go to court after deciding on an appropriate protective order, the entire process could take weeks, particularly if "representatives" challenge the scope of the order -- and so on. In reality, then, this provision provides little assistance to employers with

respect to the prevention of public disclosure of competitive information.

SEC. 355. ADMINISTRATIVE AND ENFORCEMENT REQUIREMENTS

(c) Any employee or representative of affected employees or of the unit of general purpose local government who violates a protective order issued by the Secretary under section 354(b) shall be liable to the employer for the financial loss suffered by the employer as a consequence of such violation. Action to recover such liability may be maintained in any United States court of competent jurisdiction.

Comments:

This section of the bill appears to provide a remedy in the event an employee or representative discloses information in violation of the Secretary's protective order. In actuality, the provision is a remedy limitation. Recovery is only for actual loss which an employer can prove it suffered as a consequence of the prohibited disclosure. This "remedy" provision also may be a limitation because it is arguably the exclusive remedy for unauthorized disclosure. It therefore may foreclose injunctions prohibiting disclosure. It goes without saying that any recovery against an employee for unauthorized disclosure would most often amount to a Pyrrhic victory.

(a)(1) Any employer who orders a plant closing or mass layoff in violation of section 352 or 353 by failing to notify or to consult with the affected employees or their representatives shall be liable to each employee who suffers an employment loss as a result of such closing or layoff for --

(A) back pay for each day of violation at a rate of compensation not less than the higher of --

(i) the average regular daily rate received by such employee during the last 3 years of the employee's employment, or

(ii) the final regular daily rate received by such employee, and

(B) the cost of related benefits, including the cost of medical expenses incurred during the employment loss which would have been covered under medical benefits if the employment loss had not occurred.

Comments:

It is clear from this section that compensation for backpay and other lost benefits may be assessed for an employer's failure to give notice or failure to consult in good faith, including the failure to supply relevant information. The employer is liable to each employee laid off as a result of any closing or layoff occurring after the employer's failure to perform each of these three duties.

It is the closing or layoff itself which is tainted, and liability is not limited to employees who can show harm caused by the employer's lack of compliance. Rather, all employees laid off or terminated are entitled to recover. Thus, if an employer notifies some "affected employees" but fails to notify others, all employees suffering employment loss by virtue of the "tainted" layoff or closing are entitled to recover, even those with whom the employer actually consulted in good faith.

It also appears that recovery for back pay and benefit losses is not mitigated by employee interim earnings and neither is there any requirement that affected employees mitigate damages. Loss of employment "as a result of such closing or layoff" appears to be all that is required for recovery.

Employees are entitled to recover against the employer for "related benefits" too, and not just backpay. "Related benefits" specifically includes costs of medical expenses.

(2) A person seeking to enforce such liability (including a representative of employees) may sue either for himself or for other persons similarly situated, or both, in any district court of the United States for any district in which the violation is alleged to have occurred, or in which the employer transacts business.

(3) In any such suit, the court may, in addition to any judgment awarded the plaintiff or plaintiffs,

allow a reasonable attorneys' fee to be paid by the defendant, together with the costs of the action.

Any "person" may sue the employer, not just employees' unions or other representatives. This leaves open the possibility that suits may be brought by employees or by strangers on their behalf, even if unions or other employee representatives do not sue. A state or local government could bring such a suit, as could complete strangers such as "public interest" groups or law firms. Provisions for attorneys fees and costs will encourage litigation.

(b)(1) Any employer who orders a plant closing or mass layoff --

(A) in violation of section 352 by failing to notify the State dislocated worker unit, or

(B) in violation of section 352 or 353 by failing to notify or consult with the representative of the unit of general purpose local government, shall be liable to such State dislocated worker unit or unit of general purpose local government for an amount equal to $500 for each day of the violation.

(2) A State dislocated worker unit or unit of general purpose local government seeking to enforce such liability may file suit in any district court of the United States for any district in which the violation is alleged to have occurred, or in which the employer transacts business.

(3) In any suit, the court may, in addition to any judgment awarded the plaintiff or plaintiffs, allow a reasonable attorneys' fee to be paid by the defendant, together with the costs of the action.

Comments:

For failing to comply with the bill's notice and consultation requirements, including the duty to supply all "relevant" information, an employer is liable for $500 fines for each day of the violation. A close look at this provision discloses that fines of at least $2000 per day are possible. Thus, actions for $500 per day fines may be brought by dislocated worker units or

a unit of "general purpose local government," which could includes state, county and city governments. The wording of the bill suggests that each such entity would be entitled to recover $500 per day fines. Here again, attorney fee and cost awards will encourage suits for the recovery of fines.

(c) Civil Action Against Employees or Representatives of Employees is discussed above at p. 17.

(d) For purposes of this section, in determining whether a plant closing or permanent layoff has occurred or will occur, employment losses for two or more groups, each of which is less than 50 employees but which in the aggregate equal or exceed 50 employees, occurring within any 90-day period shall be considered to be a plant closing or mass layoff unless the employer demonstrates that the employment losses are the result of separate and distinct actions and causes and are not an attempt by the employer to evade the requirements of this part.

Comments:

This section encourages lawsuits against employers to recover awards for backpay, lost benefits, attorneys' fees, and costs, where fewer than 50 employees are laid off at, for instance, separate sites, but where the aggregate employment loss exceeds 49 jobs. The burden of proving that the losses resulted from "separate and distinct actions and causes" is placed on the employer, not the plaintiff. The employer, then, is guilty until he proves he is innocent. Thus, even though fewer than 50 jobs will be lost at any particular site, an employer will be required to evaluate prospective job losses at other facilities and whether the employer's burden can be sustained in the event of a lawsuit. This provision will make life interesting for construction employers in particular, where for instance, layoffs are required at different sites due to the same "cause," i.e., winter weather. It will be interesting to see what "alternatives" unions and government representatives will devise.

SEC. 356. PROCEDURES IN ADDITION TO OTHER RIGHTS OF EMPLOYEES.

The rights and remedies provided to employees by this part are in addition to, and not in lieu of, any other contractual, statutory, or other legal rights and remedies of the employees.

Comments:

This is one of the most harmful and dangerous provisions of H.R. 1122. Section 356 makes clear that the bill's requirements are not exclusive and do not preempt state and local plant closing and layoff laws. In fact, the effect is to encourage states, counties, cities, and towns to enact their own laws and rules which are invited by the bill to be even stricter and more cumbersome and harmful to employers than H.R. 1122 For instance, a state may require one or two years of layoff notice for all employers within its borders. The language of the bill may even authorize state and local laws requiring employer-paid severance pay or other employee termination benefits. Additional state and local "penalties" can be expected too.

Until now, state and local jurisdictions have been cautious about enacting plant closing legislation because of the likelihood that it would be declared invalid under the Supremacy Clause of the Constitution and preempted by Federal labor laws. Section 356 of H.R. 1122 is a clear attempt to authorize and encourage state and local action. If H.R. 1122 becomes law, it is inevitable that employers will be faced with a tangle of federal, state, and local plant closing and layoff requirements, penalties, and injunctions. The net effect will discourage closings and layoffs, including sales, with the result that U.S. employers can expect to become less, not more, competitive.

Even employers who feel that they can or already do comply with the notice and consultation requirements of H.R. 1122 will, and should be, alarmed by the bill's anti-preemption provisions. If the bill becomes law, these employers too will become entangled in state and local plant closing requirements deliberately fashioned to keep them in their places.

SEC. 357. PROCEDURES ENCOURAGED WHERE NOT REQUIRED

It is the sense of Congress that an employer who is not required to comply with the notice and consultation requirements of section 352 or 353 should, to the extent possible, provide notice to, consult with, and disclose information to its employees about a proposal to close a plant or permanently reduce its workforce.

Comments:

The legal effect of this "sense of Congress" provision is not clear. It could lead, however, to determinations by the NLRB that employers violate the NLRA obligation to bargain in good faith when they do less than S.538 requires in closing and layoff situations. That is, in deciding, for instance, whether an employer has complied with its obligation under the NLRA to bargain in connection with the effects of a closing, the NLRB may take into account the "sense of Congress" that all employers should provide 90 to 180 days advance notice.

Also, this section read together with section 356 would authorize and encourage states and localities to enact notice and consultation laws covering employers who are not subject to Part C of H.R. 1122.

SEC. 358. EFFECTIVE DATES.

This title shall take effect on the date which is 6 months after the date of the enactment of this Act.

Mr. MARTINEZ. Thank you, Mr. Johnston.

Before I go to Mr. Geiger, let me introduce two members of the committee that have joined us, Charley Hayes from Illinois, and Jim Jontz from Indiana.

Mr. Geiger.

STATEMENT OF ROBERT GEIGER, VICE-PRESIDENT, LABOR RELATIONS, ALLIED SIGNAL, INC.

Mr. GEIGER. I appreciate the opportunity to share my thoughts on H.R. 1122. I also appreciate the introduction by Ms. Roukema and compliment her continued concern and leadership on this subject we are going to talk about today.

I would also like to say that I am summarizing the written testimony and would request that the full statement be put in the hearing of the record.

My testimony is based on two experiences. First, I serve as vice-president of Labor Relations for Allied Signal, Incorporated. Second, I have the valuable experience of serving on the Brock task force. That effort brought together a diverse group of men and women who had dealt with worker dislocation from a variety of vantage points.

As business managers, labor leaders, academic experts, state and community officials, and program administrators, the task force constituted 13 months of research, discussion, education, argument and compromise. It gave each of us a broader and a more balanced outlook on economic readjustment.

Additionally, it convinced me that a national policy in this area should be grounded in three fundamental propositions. The first is that working, work force adjustments are a natural, normal and necessary characteristic of a healthy, dynamic economy. Changing customer preferences, new technology, foreign and domestic competition and a host of other factors make it inevitable that some jobs will disappear and new ones will emerge.

Second, the process of change is often a difficult and painful one for individuals and communities, and of such a sweeping scope as to require a national commitment to address the problem of displacement.

Third, the policy should have as its goal cushioning the impact of change on individuals and preparing them for new roles in a changing economy. Policies should not seek to stymie or retard economic change.

Part A of H.R. 1122 is faithful to these premises of sound public policy. It deserves prompt enactment into law. The range of services it provides are exactly what the Brock task force decreed should be the center piece of national policy. As such, Part A constitutes a hard-won, carefully-crafted consensus of representatives of virtually all segments of American society.

Part B also has merit. One thing that the task force learned is that there is lots more to learn about worker readjustment. The demonstration projects that will be tested by Part B could supply new answers. Practical experience is needed, Part B provides it.

Part C, mandatory advance notice and consultation about alternatives is another matter. In my best judgment, in these provi-

sions, it does not advance the cause of worker readjustment. To begin with, mandatory notice and consultation remain a controversial and contentious issue. We struggled with it for over a year in the task force and could not resolve it.

Mandatory notice and consultation is at odds with what should be the bedrock of policy, the necessary inevitability of economic change. It implies that changes do not have to be made and that they can be discouraged or evaded.

In the very year that Congress and industry are wrestling with ways to make America more competitive, this is not the message we should be sending.

Allied Signal, as a matter of policy, provides lengthy advance notice of significant work force adjustments, particularly plant closings. In the 19 Allied Signal closures since 1983 involving locations with more than 50 employees, the weighted average notice provided 332 days, but the general industry practice of giving notice voluntarily should not be mandated across the board.

The circumstances and conditions of each closing are unique. Advance notice can lead to the loss of customers. It can result in the inability to get credit. It can mean the departure of key employees, and any of these effects would tend to hasten the business collapse and consequent employment loss.

One prominent exception to Allied Signal's practice of advance notice illustrates my point. In 1985, we closed a battery plant with very little notice. The reason was simple: we were hopeful, incorrectly as it turned out, that we could sell the facility. Concerted efforts were made to do this until literally days before the shutdown. Public notice of the shutdown would have undermined any reasonable chance to sell the business.

The record should show that in this case, our company provided cash bonus in lieu of advance notice to affected workers. We were in a financial position to do so. Other companies, different circumstances, may not be.

The heart of the matter is that closing a plant is to be avoided, if at all possible. It is expensive to shut down operations. As a practical matter, before a company shuts down a plant, it has sought alternatives. It has already sought and may have won concessions from workers and local government.

The decision to close is a realization and admission that alternatives have been exhausted. It is the last resort. A formal procedure for consultation at the 11th hour is thus likely to be a charade. It means the creation of false hopes. It makes company's workers and communities adversaries over a foregone conclusion, not partners in a healthy relationship aimed at adjusting to new realities.

It means, in effect, a vain attempt to hold back the tides of change. In summing up, Mr. Chairman, Part C is a fatal weakness that undermines any useful contribution it makes to worker readjustment, and it promises to split apart the consensus behind the crucially important services and programs in the remainder of H.R. 1122.

I would urge the committee to remove Part C from this legislation and move swiftly on Parts A and B.

Thank you.

[The prepared statement of Robert J. Geiger follows:]

Testimony of Robert J. Geiger
Vice President - Labor Relations
Allied-Signal Inc.

House Education and Labor Committee
Subcommittee on Labor Management Relations

Hearings on H. R. 1122
Economic Dislocation
and
Adjustment Assistance Act

March 17, 1987

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I appreciate the opportunity to share my thoughts on HR 1122, the Ecomonic Dislocation and Worker Adjustment Assistance Act.

My testimony is based on two experiences. First, I serve as Vice President for Labor Relations for Allied-Signal Inc. In the last seven years Allied-Signal has restructured itself from a $3 1/2 billion commodity chemical and oil and gas business into a $12 billion manufacturing company in aerospace/electronics, automotive products, and engineered materials. Restructuring has expanded profits and improved prospects. At the same time, inevitably, it has meant relocating or closing some facilities and product lines. That experience has educated us about worker dislocations and, I believe, sensitized us to the legitimate needs of human beings caught in the web of national economic changes.

Second, I had the valuable experience of serving on the Brock Task Force. That effort brought together a diverse group of men and women who had dealt with worker dislocation from a variety of vantage points: as business managers, labor leaders, academic experts, state and community officials, or program administrators.

The Task Force constituted thirteen months of research, discussion, education, argument, compromise, and cross fertilization. It gave each of us a broader and more balanced outlook on economic readjustment. Additionally, it convinced me that a national policy in this area should be grounded in three fundamental propositions.

The first is that workforce adjustments are a natural, normal, and necessary characteristic of a healthy, dynamic economy. Changing customer preferences, new technologies, foreign and domestic competition and a host of other factors make it inevitable that some jobs will disappear and new ones will emerge.

Second, that process of change is often a difficult and painful one for individuals and communities, and of such sweeping scope as to require a national commitment to address the problems of displacement.

Third, that policy should have as its goals cushioning the impact of changes on individuals and preparing them for new roles in a changed economy. Policy should not seek to stymie or retard economic change. To do so would be misguided in the short run and ultimately counterproductive.

Part A of HR 1122 is faithful to these premises of sound public policy. It deserves prompt enactment into law. The range of services it provides are exactly what the Brock Task Force agreed should be the centerpiece of national policy. As such Part A constitutes a hard-won and carefully crafted consensus of representatives of virtually all segments of American society.

In fact, if there is anything wrong with Part A, it is that its wide acceptance may lead people to underestimate it. In recent months, the debate has tended to treat its provisions lightly -- as a lowest common denominator.

That may be the fate of any consensus in retrospect. It does not accurately convey, however, how much hard work, good faith effort, sharp debate and delicate compromise were required to produce it. Part A may look like a lowest common denominator in March 1987. In October 1985 when we began our work, it looked more like a pipedream.

I will not recite all the chapters and verses of Part A. Let me touch on the elements I think are most important:

- the emphasis on the rapid response to displacement situations;

- the orientation toward preparing workers for new and emerging opportunities;

- the high priority given to job bank information improvement, search skills, and outplacement services;

- the recognition that a combination of services -- income support, basic literacy, practical skills training, and job search -- is required.

Part B also has merit. One thing the Task Force learned is that there is a lot more to learn about worker readjustment. The demonstration projects that will be tested by Part B -- ranging from job clubs to training loans to self-employment incentives -- could supply some new answers. Practical experiment is needed; Part B provides it.

Part C -- mandatory advance notice and consultation about alternatives is another matter. My best judgement is that these provisions do not advance the cause of worker readjustment. They deal it a substantial setback.

To begin with, mandatory notice and consultation remain a controversial and contentious issue. We struggled with it for over a year on the Task Force. It defied all attempts at consensus or compromise. All parties made, I am convinced, their best effort to resolve it. After all we did come to agreement on other complex, difficult, controversial questions. But in the end we had to acknowledge that, like the larger community we represented, we could not find common ground on this matter.

Coupling that contentious and unresolved issue with the widely accepted provisions of Part A threatens to shatter the consensus of the Task Force. It may slow and possibly thwart the passage of needed legislation. It could make business, labor, academia, and government adversaries instead of allies on worker readjustment policy.

In addition, mandatory notice and consultation is at odds with what should be the bedrock of policy: the necessity and inevitability of economic change. It implies that changes do not have to be made, that they can be discouraged or evaded. In the very year Congress and industry are wrestling with ways to make America more competitive, this is not the message we should be sending.

Let me add some specific comments on notice and consultation.

Advance notification of impending closings is constructive -- as a general approach. It is also an increasing industry practice. Many companies made it standard operating procedure before Congress considered requiring it by law. The Business Roundtable and the Committee for Economic Development both urge it on their members. The National Center for Occupational Readjustment was founded by many companies, including my own, precisely to research and educate businesses on how to deal with closings -- and as much notice as possible is among its prescriptions.

As a NaCor charter member, Allied-Signal as a matter of policy, provides lengthy advance notice of significant workforce adjustments -- particularily plant closings. In the nineteen Allied-Signal closures since 1983 involving locations with more than fifty employees the weighted average notice provided was 332 days. Allied has also spent millions of dollars to provide adjustment assistance, including severance pay, medical insurance continuation and outplacement assistance including re-training.

But the general practice of giving notice voluntarily should not be mandated across-the-board.

The circumstances and conditions governing each closing are unique. The reasons a company decides to shutdown a facility, the impact on workers, the community, and the company, the terms of severance and benefit continuation, the opportunities for alternative employment -- all these and more vary dramatically.

Responsible employers in fact tend to take into account the size of a layoff and the impact on a community when deciding length of notice. Allied-Signal has given up to two years advance notice when a major shutdown was likely to seriously impact an area.

The other side of the coin is that at certain times, lengthy advance notice simply is not possible.

Advance notice can lead to a loss of customers. It can result in an inability to get credit. It can mean the departure of key employees. And any of those effects would tend to hasten a business collapse with consequent employment loss.

One prominent exception to Allied-Signal's practice of advance notice illustrates my point. In 1985, we closed an automobile battery plant with very little notice. The reason was simple: we were hopeful -- incorrectly as it turned out -- that we could sell the facility. Concerted efforts were made to do that until, literally, days before the shutdown. Public notice of the shutdown would have undermined any reasonable chance to sell the business.

The record should show that in this case, our company provided a cash bonus in lieu of advance notice to affected workers. We were in a financial position to do so, other companies in different circumstances might not be.

Lastly, mandatory consultation. I believe the high expectations of proponents of this provision would diminish considerably if they were familiar with the general way business decides to close a facility.

The heart of the matter is that closing a plant is to be avoided if at all possible. It is expensive to shutdown an operation. The physical dismantling or relocation of capital equipment costs a great deal of money. Closings trigger expensive severance payouts and benefit continuation -- to workers who are no longer producing income for a company. There may be ongoing tax obligations. Inventory must often be disposed of at a loss. And there are less tangible but no less real considerations: decreased morale among remaining employees, reduced customer confidence, and loss of community good will.

The relevance of these facts is that "mutually acceptable alternatives" to closing are likely to be illusory. As a practical matter, before a company shuts down a plant it has sought alternatives. It has already sought and may have won concessions from workers or local government. The decision to close is a realization and admission that alternatives have been exhausted. It is the last resort.

A formal procedure for consultation at the eleventh hour is thus likely to be a charade. It means the creation of false hopes. It makes companies, workers, and communities adversaries over a foregone conclusion not partners in a healthy relationship aimed at adjusting to new realities. It means, in effect, a vain attempt to hold back the tides of change.

In summing up, Mr. Chairman, Part C has fatal weaknesses that undermine any useful contribution it might make to worker readjustment. And it promises to split apart the consensus behind the crucially important services and programs in the remainder of HR 1122. I would urge the Committee to remove Park C from this legislation and move swiftly to pass Parts A and B.

Mr. MARTINEZ. Thank you, Mr. Geiger.

I have just one question and I would like each of you to respond to it. Before I ask, let me start out by saying, sometimes we are fearful of change just because of the unknown. As someone said, fear is half of what we know and half of what we do not know.

But if we looked around, we would find out about that half that we think we do not know. Let me give you an example. In the City of Monterey Park, there is a large company you are all familiar with, Ameron. Ameron was going to establish an international headquarters, but they did not bother to look around the community to see if anything was available to fit their needs.

They just contemplated moving, which would have caused serious dislocation in the city, the loss of tax base, and loss of employment for the people that lived in the area. And I found this out quite by accident. I asked the city manager to meet with Dick Jenner, who was then the vice-president of Ameron. In a meeting with him, we found out what his needs were, and he found out that we could provide them their needs.

They needed access and visibility from the freeway and they needed a pad of a certain size. We were able to accommodate them for that. As a result, they did not move. They stayed in the area, increased employment, and increased our tax base, helping the city out tremendously.

The point is that at first they did not bother to ask. They did not bother to notify anybody. So, nobody knew about it. If I had not found out by accident, they would have moved.

In another instance, there was a furniture factory in which I was employed at one time. It was one of those times of the year when companies that had not been in business for a long time, which this company had not been, were facing some severe competition. It could have easily gone under.

The owner came and told us about closing, you know, because of one thing—because he felt it was fair to tell the employees that he was having serious problems and there was a probability he would close up. I understand the word fair. Do you think it is fair for an employee to show up one morning and have no job because the company decided to close some months in advance and didn't tell anyone? No company decides today and closes tomorrow. They know well in advance that there are serious problems and they might need to close.

I understand their concern about, you know, market availability when they have announced a close, if they announce it too publicly. I understand that there is the potential of losing key employees, but let me tell you, in every case where there has been a plant closure, the rumors that run amuck in the company usually cause those very sharp employees to start looking and leaving anyway. So, that is not a good argument.

But the point is that this gentleman told us, because he realized it was not fair to close one day, all of a sudden, after having these problems, and have his employees show up to work, lunch pail in hand, to see a closure notice.

It is very unfair. So, you talk about fairness. Fairness runs on both sides. Consideration for both sides. But in that particular instance, the employees put their heads together, went back to the

employer, and asked about the reasons for closing. He said there was not enough capital investment to keep the place open. He said there was too much stealing going on, and not enough concern for production. The employees offered him a deal: they would become an employee-owned company. As an employee-owned company, they would then have a lot more incentive to make sure that stealing did not occur, and they would make sure that they were productive as they could be. It is one of the most thriving furniture companies in Los Angeles today because of that.

Let me get back to the question. In the Canadian experience, the company has a choice to either give notice or pay—let us use the terminology severance pay, a certain amount of pay to make up for not giving a certain amount of notice. If they close the day they notify them or if they tell them in advance they are going to close, they allow the Industrial Adjustment Service to come in and work out a plan for employees and employer, and other companies around can try to relocate these workers.

It works out very well for them in these cases. They demonstrated to us the case of Tonka Toys, where almost all of the employees got placed in other jobs that were similar.

The question is: do you not think it is fair that—or would you think it was fair for a law to be put in place that said, look, if you are worried about all you say you are worried about, you do not have to give advance notice you can tell them the day you close, but you have to instead pay X number of weeks pay? Or, you can take advantage of an industrial service set-up similar to NACOR or IAS to resolve those problems. Maybe you would not have to close, maybe they could find some way, some alternatives for you.

What would be wrong with something like that? We will start with Mr. Geiger.

Mr. GEIGER. Well, let me comment. One of my colleagues mentioned that the report of the entire Brock task force really and truly dealt with the medium and smaller companies. Now, we, of course, worked as intelligently as possible in shaping that for the betterment of the whole and the competitiveness of the entire country.

But the problem that the Brock task force addressed, in my judgment, was that the major companies have built-in services within their organizations to support retraining and so on and so forth, but in the small and medium companies, they do not always have the built-in expertise and this is why we followed the Canadian support and rapid response team approach. That was the most important element of this whole thing. We still have unemployment, but we have other support services to help them in the monetary aspects, but the real problem is the professional help and guidance.

I think the task force focus on that aspect of the Canadian situation makes a lot of sense. That is the real need in the dislocated worker area. The major corporations, I talked about, provide severance and provide professional outplacement. The growth in services offered on a voluntary basis by industry itself from 1980 to now through the guidance of NACOR and others has grown substantially.

Mr. MARTINEZ. Thank you, Mr. Geiger.

The one thing that is clear, though, is no intervention can take place without that early notice.

Mr. Johnston.

Mr. JOHNSTON. Mr. Chairman, I have submitted materials which I hope you and your staff members will look at, and among them are a study done by Carnegie Mellon University of unemployment benefits, support systems in place at what was then called U.S. Steel during 1985.

As you know, the steel industry has been hit very hard by lay-offs, including closings, and since we are the largest company, our proportionate share of that has been the largest.

In 1985 alone, we paid out approximately $300 million to support employees in lay-off. We have extensive private systems in place, some through collective bargaining and equivalent systems for our non-union employees, and I think the problem with your question—what solution you are proposing through your question is this one, our economy is so large, so varied, so dynamic, so segregated, so variable, that it is difficult to impose on that system a legislative requirement that is going to be workable, super-imposed on many of the things that are already in place.

We have always provided notice. We provide severance allowance. We provide supplemental unemployment benefits. We provide early pensions. We provide supplemented early pensions. We provide health care for people who go on early pensions for a lifetime. We provide retraining centers. We provide career development centers. We give all kinds of elaborate support.

There are many companies in this country that have different circumstances, different size, different competitive requirements, different financial support and different competition. I do not think that you can devise a top down system that is going to effectively respond to all the variations in all those companies. It is hard to generalize from an individual experience.

Typically, companies seeking new locations would have early been alert enough to exhaust the kind of possibilities you described. That I would regard as a fairly typical experience. That they would not discuss that with local government leaders before making such a move, is astonishing to me.

Los Angeles is built on companies that moved there from somewhere else because of market changes, demographic shifts, and I do not think you want to do anything that would prevent the necessary ebb and flow of change. While many jobs were disappearing, many more jobs were created in our society by that process. We are the envy of most of the advanced world in our job creation. That does not mean that there are not problems. We do not want to kill the good part.

In New England, if we had tried to hold on to the textile industry in the fifties, we would not have the dynamic high-tech economy that we have in that sector of the country now. So, we have to be careful when you legislatively tamper with the dynamics of change because I think they are essential to remain competitive.

Mr. CLAY. Will the gentleman yield at that point?

Mr. MARTINEZ. Yes, sir. My time has expired, and, so, if you would like to go on your own time.

Mr. CLAY. My own time. I want you to yield.

I want to put this into the record. It is a document "Plant Closing, Advance Notice, and Rapid Response", compiled by the Congress of the United States, Office of Technology Assessment. It sort of refutes the last statement that you made when they went out and did their study. It says that such benefits benefit only 43 percent in terms of health insurance, 53 percent of the employees said they gave white collar workers severance pay versus 34 percent for blue collar workers, 42 percent provided continued health insurance for white collar workers versus 32 percent for blue collar workers.

So, it seems to be a critical need for this if less than half of the people are receiving the benefits that are documented.

Mr. CLAY. But to get to my own time, let me ask you another question. I am having a little trouble following your logic when you articulate that the—all of these lists of things of the reasons why you cannot give notice and you should not be held accountable because of these things.

This bill provides for everything that you listed. If there is any unforeseeable reason why you did not have the information, did not know that you were going to have the massive lay-off or the plant closing, the bill takes—it provides for that. It says on page 37, an employer may order a plant closing or a mass lay-off before the conclusion of the applicable period described in Subsection B if unforseeable business circumstances prevent the employer from withholding such closing or lay-off until the end of such period.

Then, the other point that I have trouble following is where you say that the Government should not mandate an agreement. On the very next page, all we require is consultation and good faith, nothing mandates an agreement.

My question to you is that you have testified that by imposing this kind of condition on business, it will make you less competitive and I assume that the competition is between foreign countries, but if every foreign country is required by law to do precisely what we are asking or even less, how does that make you less competitive with those countries who already are imposing this?

The second question is that do you not think that if your—the companies in your organization require the governments, federal, local, and state, that they have contracts with to give advance notice when they are going to cancel those contracts, do you not think it is fair that you in turn turn around and give those local, state, and federal governments notice when you are getting ready to cancel the contracts of fifty or 500 or 2,000 people?

Mr. JOHNSTON. I will try to answer as many as I can recall.

Mr. CLAY. Only two questions.

Mr. JOHNSTON. All right. First of all, it does not refute the numbers I gave because I gave the numbers for my company. I am saying to you there are many small businesses that for a variety of reasons cannot provide that range of benefits.

Second, we do have competition from foreign countries, but we have an entirely different economic base to compare. We cannot cherry pick from the foreign countries. We have tough competition from Canadian steel. Now, if you want to take Canadian shutdown requirements, we would also have to consider the fact that the United Steelworkers have given our Canadian competitors about $6

an hour in labor cost advantage. Canadians have a tariff advantage on steel going across the border. Canadians have a 2 year capital recovery time and about a 30 percent currency advantage at the moment.

So, you have to look at the whole range of product costs not just this one. That is also true in many countries in Western Europe. The bill says, indeed, that if there are unforeseeable circumstances, you could be excused, but unlike the National Labor Relations Act, which puts a duty on labor and management to "bargain" in good faith, this bill says you have to bargain to an "agreement" and that is the requirement posed, that is the purpose of it, to seek "agreement".

Mr. CLAY. I want you to show me in this bill where it says that.

Mr. JOHNSTON. Well, I can pick it out of my materials. I read it very carefully and you have a difference there in the duties imposed on the parties. Not only that, but you then have the right for employees to seek an injunction in federal court to say that the company did not bargain in good faith, that it did not satisfy its obligation of reasonableness, and I do not see any similar imposition imposed on labor in that bill.

Mr. CLAY. I think you are talking about a bill that we introduced last year.

Mr. JOHNSTON. No.

Mr. CLAY. There is no injunctive relief in this bill. It is not injunctive. Page 38 says that, shall not compel any employer to agree to such an alternative or modification. Shall not.

Mr. JOHNSTON. I think the requirement to consult with employee representatives and the right for the state government to, in effect, hold an election, pick one representative in non-union plants, makes both the bill and standard legal practice say "for the purpose of agreeing to a mutually satisfactory alternative to the closing."

Mr. CLAY. Why would you consult unless it would be for the purpose of an agreement? You do not consult to disagree.

Mr. JOHNSTON. You consult to bargain in good faith.

Mr. CLAY. It says consult in good faith.

Mr. JOHNSTON. What happens if you do not reach an agreement?

Mr. CLAY. It says that this requirement to consult shall not compel an employer to agree to such an alternative or modification.

Mr. JOHNSTON. That is correct, but——

Mr. CLAY. That is legal language.

Mr. JOHNSTON [continuing]. The test is so subjective that the employer, who would have the burden as I read that language, we would have a difficult time proving that duty was met where agreement was not reached. Only at the conclusion of the notice period and after fulfilling the bargaining duties will the employer be allowed to then make the closing, and you would have the obligation to continue paying people in the interim.

There is an injunctive relief provided by employees also—for employees.

Mr. CLAY. There is no injunctive relief in this bill. You go to court for back pay.

Mr. JOHNSTON. I think there is provision for injunctive relief under the general equitable powers of federal district courts, which employees may seek pursuant to this legislation. This bill imposes a new standard and does not prohibit injunctive enforcement

Mr. CLAY. There is an implied kind of penalty for contempt of court which is used in all kinds of injunctive relief programs. If the court orders you to pay that back money and——

Mr. JOHNSTON. If an employee alleged that the company had not made a good faith determination, then you would have to have trial on the merits. We calculated that under this bill——

Mr. CLAY. And the penalty for it is back pay. It is limited to back pay.

Mr. Soutar——

Mr. JOHNSTON. It would be fairly expensive for large companies.

Mr. CLAY. Mr. Soutar, you point out in your testimony that this country has created an average of 2 million jobs a year since 1976. I just hope that you are aware as to the nature of those jobs. Forty-four percent of them have been part-time or minimum wage, and the minimum wage has not been readjusted in more than 6 years.

More than 60 percent of those 12 million employees that we hear so much about have no health insurance, no retirement benefits, and most are not eligible for unemployment compensation. So, I do not think that you want to advocate to this committee or to anybody else that we ought to be in the process of switching jobs from middle income employers to the lowest employers in our society and consequently reducing the standard of living and the quality of life in this country.

I note that you cited Europe as losing 840,000 jobs and you implied that it was because of the plant closing or the restrictions they have on plant closing. You did not note, however, that Japan, with its vigorous economy, also requires a 30 day notice if 30 or more dismissals are contemplated within 30 day period. Notification in Japan is required to both workers and the governmental labor office, and a monetary fine is imposed for non-compliance.

Now, they have that type of legislation, the same type that we are talking about here. How do you explain that they are doing so good in their area of competition with this?

Mr. SOUTAR. Well, I would be the last, I think, of anyone in the business community, would be the last to hold up Japan as a model of the kind of economic problems that we have and the labor mix that we have as opposed to the homogeneous labor force in Japan. It is hard to draw any true parallels. It is much easier to draw parallels with Europe.

As a former chairman of the leading international employers group in this field for a number of years, and also as a delegate to International Labor Organization on occasion, I have observed and heard numerous reports of the problems employers, particularly the national employers, have in Europe but not to mention their own national employers in trying to improve their efficiency through the normal process of plant closings, which is just as normal as plant openings.

They have told us over and over in our—at least in our private sessions, long drawn out case histories of the problems they have had with government-mandated procedures. They have told us so

often that we do not have the slightest doubts in our own minds of the problems involved with mandated notices and punitive procedures. I am not talking about those which may be considered efficacious by the Brock task force or by this bill or other similar bills.

But there is no doubt in the minds of business, based on not just statistics, but case histories over and over and over again which are very objective, were given to us often in off the record of the problems involved.

I think you will find in the publications evidence to the effect that the legislation in Europe and the plant closing legislation there has been a considerable impediment to the formation of new jobs, and that can be supported. That figure that I gave you is of that type. The figures are general figures and speak for themselves and I have made no attempt to break them down, but I am sure we could.

Mr. MARTINEZ. Excuse me. The time of the gentleman has expired.

Mr. CLAY. Thank you, Mr. Chairman.

Mr. MARTINEZ. Before I do turn to Ms. Roukema, I would like to introduce the ranking minority member of the Full Education and Labor Committee, ex-officio of both these committees, Jim Jeffords of Vermont. Also joining us is Mr. Dale Kildee and Mr. Tom Sawyer, members of the committee.

With that, I will turn to Mrs. Roukema.

Mrs. ROUKEMA. Thank you, Mr. Chairman.

I am sorry Mr. Clay left at the moment, but his line of questioning was the one that I was about to pursue on the subject of how you interpreted the term "unforeseeable business circumstances". So, I will not go on with that line of questioning, except to say that I think it would behoove this committee to very carefully investigate the legal questions that are underpinning that particular statement.

I understand it is correct, as Mr. Clay has stated, that injunctive relief is no longer part of this bill, but there are legal considerations here, other precedents that will apply here. I think there is a good case that is made by Mr. Johnston and Mr. Geiger that there is the potential here for endless litigation.

So, I think we must look at that, although I concede, Mr. Clay, that the bill has been improved on the subject of injunctive relief.

It is awfully difficult, and I do commend the three gentlemen for stating your cases and stating them well, but it is awfully difficult for me as one member of Congress to really say in support of your position on voluntary notification that, indeed, there is something terribly inhibitory to either competitiveness or the fair functioning of business for something like a 30 day notice or possibly even a 45 day notice.

Would you address yourselves to that question? 120 clearly, 90 days clearly, but will you address yourselves to the question of a shorter notification period as it applies to your own business experiences? I will start with Mr. Geiger.

Mr. GEIGER. I could answer to the extent that fundamental policy on the sensitivity, I hope that we exhibit, on treating these situations. It does not apply, but I know when wrestling with the problem for 13 months in the task force, we really studied it from

many, many avenues because there was a great urging by the chairman and others to try to reach consensus on that issue.

Now, again, I think in my opening remarks, I mentioned that——

Mrs. ROUKEMA. Let me put it in this context. Excuse me. I hope I am not being rude by interrupting you, but, you know, it is really difficult to justify the business that tells people tomorrow you are laid off, tomorrow you are out or next week you are out. It is difficult to see, except under the most extraordinary and extreme circumstances, that that is justifiable business practice.

Now, how did the Task Force address that issue?

Mr. GEIGER. I think this is only occurring under extreme circumstances. I do not think——

Mrs. ROUKEMA. What are the circumstances?

Mr. GEIGER. In fact, I do not think the statistics that are being presented show the real activity that is going on today. You know, those studies are very extensive, very complex, but I know if you took a snapshot of notice provisions, in 1980 and took it again in 1987, you would see the tremendous growth and consensus that has developed in this country to manage this real problem.

I emphasize the voluntary aspect—a recent article in the paper, the Wall Street Journal noted that even plants have to be more individualistic in managing their problems. You cannot standardize managing the profitability and competitiveness of plants. This bill pushes toward standardization. I believe the exception today, the extraordinary exception, is when companies do not give any notification.

Mrs. ROUKEMA. Mr. Johnston.

Mr. JOHNSTON. Well, I think it is a very fair question and one for which there are good answers. Keep in mind, if you would, that I represent an industry who—which has often been accused of having been over-generous at the bargaining table. My predecessors——

Mrs. ROUKEMA. Yes, you have been.

Mr. JOHNSTON. The principal sin of my predecessors, according to their critics.

Mrs. ROUKEMA. You have not been accused, I mean. I am not—

Mr. JOHNSTON. No. I understand. They were accused in my judgment of being too generous and one of the most generous portions of our labor agreement are our very expensive exit costs for lay-off, for plant closing.

Most of the time, and, in fact, I do not see any problem on plant shutdown with 30 days notice. We give 90 now under our contract. There is a different problem with respect to lay-offs.

You cannot always control a customer having a fire in a plant and suddenly cancelling an order, having a problem. Most of our automobile customers, for example, are going to much shorter inventory supply systems. They are taking very competitive advantage of over-supply in steel, shortening their lead times on orders, raising their requirements for quality and you cannot always predict short-term lay-off.

When we make a lay-off notice, we provide a very generous range of unemployment benefits for our people, and I think Mr. Geiger has made a good point and I hope I made it earlier also,

that the system is so variegated by industries, by companies, and by applications, it is hard to devise a shoe that will fit all those many, many different feet and circumstances.

Mr. SOUTAR. That is the key.

Mrs. ROUKEMA. Thank you. Yes.

Mr. SOUTAR. These plants, these plants coast to coast, are like fingerprints, and the amount of notice depending on the particular problems of each, particularly small, particularly close to Chapter 11 are the worst, vary infinitely the amount of notice in the employer's discretion which is under attack could be from a weekend to a couple of years.

I have experienced both with the supportable factors in each case perhaps depending on who is listening to the case, but I think you can think of them in terms of fingerprints, you will be closer to the truth. We are talking about national legislation here which applies to the majority. We are talking about the barrel of apples and we do not want to have new legislation based on one or two little apples or a few rotten apples.

I also would like to say, Mrs. Roukema, on the point of the injunction, if you will let me read from a note that I have, there may be some confusion between the Senate and the House bill, but if you will let me read this, it might be helpful, since Mr. Clay and you both allege that the injunctive——

Mrs. ROUKEMA. I think, Mr. Soutar, time is up. However, I will ask unanimous consent that your statement be inserted in the record at this point.

Mr. SOUTAR. This is not a statement. This was a side comment, but there is an injunctive procedure in the bill.

Mrs. ROUKEMA. Will you quote—will you put it on a notation and citation on a note and we will see that it will be put into the record?

Mr. SOUTAR. Yes.

Mrs. ROUKEMA. Yes. We will put that into the record.

Mr. MARTINEZ. Mrs. Roukema, why do you not go ahead and cite it? We will allow you a little more time so that you can have that clarified.

Mrs. ROUKEMA. All right. Thank you.

Mr. SOUTAR. All right. Again, I say, I do not have the two bills in front of me, but presumably this is the same with both bills, but it is noteworthy that because of the way in which the bill is structured, employees in local governments will be able to obtain court injunctions to stop lay-offs and closings. Under their general equitable powers, federal district courts will be authorized to issue such injunctions against employers accused of failing to satisfy burning obligations. Injunction would freeze the status quo forcing the plant to keep operating until such time as the court makes the determination on the merits that the employer's obligations have been satisfied.

Mrs. ROUKEMA. All right. Mr. Soutar, I think that would come under——

Mr. MARTINEZ. Mrs. Roukema, just to keep the record straight, are you reading from a bill?

Mr. SOUTAR. No. I am just reading from some notes that I have.

Mrs. ROUKEMA. Yes.

Mr. CLAY. It is not in the bill.

Mrs. ROUKEMA. I know. I am sorry, Mr. Clay. Mr. Chairman, I made that point while you were out of the room and am in agreement with you, but I also made the point, and I think this is what Mr. Soutar is getting to, that there may be legal precedence under other terms of law that might lead to required litigation, although the injunctive power is not explicit in this bill.

But it would behoove the committee to look into those other legal precedents that would impinge on this particular bill.

Mr. SOUTAR. Yes. It is apparently felt to be arguable, but I think we would stand on that language.

Mrs. ROUKEMA. Thank you.

Thank you, Mr. Chairman.

Mr. MARTINEZ. Mr. Ford.

Mr. FORD. Frankly, I have been at this for thirteen-fourteen years now in one form or another in this legislation. Nobody from any of your associations has ever taken five minutes to come in and talk about the content of the bill. It is not new. Mr. Clay's association with it, mine goes back over many years. I think I am correct in saying nobody has come in to talk to him, and then you wait until the bill goes in every year and then you start saying things like you just said.

Now, last year or in 1985 when we had the bill on the Floor, an unsigned piece of paper was circulated to the members that made the assertion you just made. People who were responsible for that are called the Labor Policy Association. Not until I appeared before them in Virginia Beach did their lawyers admit that they were responsible for that unsigned piece of paper that circulated to all the members saying that this bill gave the courts the authority to enjoin the closing of a plant.

Now, I would like to see some time any lawyer who claims to be a legitimate member of the bar put such an opinion in writing because I think it is ludicrous to suggest that given the constitutional protection for property rights and the right of contract that any court would disregard that totally and simply construct out of thin air an injunctive relief.

I do not know if the gentleman has had much experience in trying to get injunctive relief or prevent people from getting injunctive relief against you, but courts do not pass out injunctions willy-nilly. They might issue a temporary restraining order for twenty-four to forty-eight hours where there is some circumstances that are not on the face easy to discern, but that would be the extent of it.

I wonder if the gentleman, instead of saying I have some notes here, can say that this bill would provide for injunctive relief, would cite his authority. Who in your association or who do you speak for who will take the responsibility for making the assertion as a professional that the language in this bill provides a right to injunctive relief in the form of an injunctive order from a federal court preventing a management from closing a plant?

Mr. SOUTAR. First, Mr. Ford, I think before you came in, it was Mr. Clay that raised the point, then Mrs. Roukema pursued it, which is the only reason I brought it up as a point of information.

Mr. FORD. You made an unequivocal statement from your notes, and——

Mr. SOUTAR. I——

Mr. FORD [continuing]. We had anticipated that you would be doing that sooner or later.

Mr. SOUTAR. Well, she asked if——

Mr. FORD. I would like to have you do it now so that we can find out if you are willing to stand up and give us some authority for it or if you are going to continue to try to fool Members of this Congress with statements like that that are unsubstantiated, have no basis in fact or in law, and are intended solely and only for the purpose of misleading the Members of this body into misunderstanding the intent and purpose of this legislation.

Mr. JOHNSTON. Mr. Ford, may I respond to your assertions?

Mr. FORD. I might also observe that you have two of the principal authors and sponsors of this legislation here this morning on the record, saying there is no injunctive relief provided and if that is not sufficient legislative history for you, if you people wanted to do something about getting a bill instead of just saying hell, no, we will not go, we will not support anything, sit down with us and talk about language like that, we will give you a legislative history that will guarantee there is no injunctive relief possible.

We have no intention of giving injunctive relief. That is silly. Now, you really think that is something to be concerned about? Sit down with us and we will work out a way to keep it from happening, but if you are not willing to put up, then we suggest that we are going to put a label on the material that you will be sending consistently through your members, unfortunately, as well as directly to the Members of this body, containing what I consider to be nothing short of lies.

Mr. MARTINEZ. Mr. Ford, would you like Mr. Johnston to respond?

Mr. FORD. Sure.

Mr. JOHNSTON. Mr. Ford, I would be happy to come in and talk with you or other proponents of the bill on what we regard to be serious problems that we have with it. We discussed, I think, part of them perhaps while you were not here.

My understanding of the bill is that an employer who is charged with failing to provide notice or to consult in good faith would be liable to each affected employee for back pay for each day of the alleged violation, if it is established. The employees may also be awarded attorney fees to be paid by the employer, and I am telling you that based on thirty years of administering labor agreements with major industrial unions, that injunctive relief is often sought in courts for failure now to observe provisions of the labor agreement and courts are increasingly willing not to yield to the arbitration sections of those labor agreements and how many of them would be granted. I agree with you, that it is not always easy to get an injunction as opposed to a temporary restraining order, and I have been on both sides of them for wildcat strikes and other things.

But you could have with aggressive enforcement of this Act very extensive effort in that area, and the advice we have from counsel is that it leads to employees being allowed to seek that relief.

I calculate that if this bill had been in effect for the first six months of the year, we went back and applied it to our bargaining—to our work force, we would have been required in U.S. Steel to have given notice for the large lay-off provisions twenty-eight separate times. That would have required twenty-eight negotiations with local government officials and with employee groups while we were trying to seek a national labor agreement with the steelworkers.

That gets protracted, that gets expensive, that takes a lot of staff for beleaguered industries. It adds costs to what is already a high cost industry. I do not quarrel and said so before you came in with some of the provisions in the bill. In fact, we applaud them.

Many of the things are things we already do, but when you impose those with mandatory penalties and various kinds of back pay and legal remedies across a wide variety of endlessly different circumstances, I think there are legitimate problems.

Mr. FORD. I take it you are not an attorney.

Mr. JOHNSTON. I have——

Mr. FORD. You do not practice labor?

Mr. JOHNSTON. I do not practice law. That is correct.

Mr. FORD. All right. Now, let us go back to what you started to say about the injunctions. You said that there is a provision in the Act that provides that if you willfully fail to give notice, you become liable to the employees affected for each day that that violation occurs.

That means each day after you knew that you were going to close the plant and did not give notice within the time prescribed by the statute, you were liable for it.

Now, as a lawyer or law-trained person, would you go ask for an injunction to enforce that provision or would you simply say to the employees, let us start a class action here and collect the damages?

Mr. JOHNSTON. As a——

Mr. MARTINEZ. Before you respond, let me say the time of the gentleman has expired and I will allow a short response.

Mr. JOHNSTON. Okay. As a——

Mr. FORD. The point is I think that you are mixing your legal remedies when you look for an injunction. When you have an action for damages, you do not go ask for an injunction for damages. You go right after the damages, and then you ask for whatever relief you need, but there is nothing in the accrual of the right to damages by the employee that confers a further right on somebody to enjoin you from closing the plant.

Now, how do you jump from one thing to the other? You have two different kinds of remedies, and you extrapolate from one remedy that is very clear and very clean into something that becomes very complex that we do not intend at all.

Now, if there is language in this bill that lawyers really believe would cause that jump to be taken, I would sit down with my other colleagues or co-sponsors of the bill and suggest we work it out with people of good will so that that cannot happen. That is not an intended result of this legislation. We do not believe it is in any way possible or necessary.

Mr. JOHNSTON. Asked and answered, Mr. Chairman. I think, Mr. Ford, that I would love to sit down and discuss with you what I

find to be problems with this bill based on thirty years as a labor contract administrator, and I am saying to you that I think your question assumes the point in issue, when you say if an employer fails to provide this.

The question is always going to be have we, indeed, failed to provide it. The mere allegation does not mean that we have, and that is going to be left to third party determination, and that gets to be protracted and that gets to involve lots of litigation and that gets to involve remedies that are not always mutually exclusive.

Mr. FORD. You are not suggesting that it creates a right to injunctive relief?

Mr. JOHNSTON. I am saying it creates an avenue that may be—that may get there.

Mr. MARTINEZ. The time of the gentleman has expired.

Mr. Jeffords.

Mr. JEFFORDS. Let me pursue this issue. We argued this rather extensively in the House Floor last year. In fact, the amendment which I introduced and which passed specifically stated that "the remedy provided by this subsection shall constitute the exclusive remedy with respect to violations of this Act." That is not in H.R. 1122 which leads you to believe that perhaps by leaving that provision out, you have moved back since the reason we put it in had to do with whether or not injunctive relief would be provided. I would just quote from my argument at that time in quoting a case, Califano v. Yamasaki, as to the powers of the court. It says: "Absent clearest command to the contrary from Congress, federal courts will retain their equitable power to issue injunctions and suits over which they have jurisdiction". I think that is a general concept of law.

So, in my mind, unless you explicitly rule that out here, you have left open the very large possibility that a court will come in and say, well, we believe that injunctive relief would be allowed here. It does not say it is not allowed, and then you have injunctive relief. That is the way we argued last year and successfully on the House Floor.

Is that generally your feeling?

Mr. JOHNSTON. We think that is an avenue that may be available, and we also know from experience that whatever avenues are there, they will be aggressively pursued especially where large unions are representing our employees.

Mr. JEFFORDS. Right. I obviously tend to agree with you.

Let me go on to the question of whether to give notice or not. I notice that incentives for notice were, I think, in the views of Mr. Johnston and also the Brock task force said that they preferred incentives for notice.

Can you tell me what kind of incentives you would suggest? I know in Massachusetts, for instance, I think they have an incentive provision in their notice law, and I do not know how successful that has been, but I do not think it has been too successful.

I wonder if you would give me some comments or some guidance on that.

Mr. JOHNSTON. Well, I am not sure that my testimony or my statement deals with incentive for notice, but I think, generally——

Mr. JEFFORDS. Mr. Geiger, maybe.

Mr. JOHNSTON. Yeah. I think it is in Mr. Geiger's.

Mr. GEIGER. Well, we did deal with that very subject as an alternative during our deliberations on the task force, but could not come up with specific recommendations as to the subject. It was discussed.

But, in total, as we said from the very beginning here in the remarks, we do approve of Parts A and B of the proposal. It is not that we are here objecting to the proposed legislation in its total form.

Mr. JEFFORDS. I understand. But can anyone give me any idea what the term—I know the secretary uses it, the task force—can you, Mr. Johnston, give me some idea of what you are talking about?

Mr. JOHNSTON. Well, I would tell you this, that employers in large industrial companies have a powerful incentive not to close a plant if that can be avoided. I submitted with my statement a very knowledgeable article by a Professor Freuhan from the Harvard Business School in which he estimates that the exit cost for closing a typical integrated steel mill are now about $300 million.

One of the problems with many of our domestic steel companies now is that they have a terrible choice between trying to operate high-cost plants, and for many of them the impossibility of closing those plants because of the elaborate scheme of exit costs that are already in place.

The experience of Gulf State Steel, formerly Republic Steel, in Gadsden, Alabama, Weirton Steel, formerly National Steel, in Weirton, West Virginia, are all instances of employer—employee ownership attempts to avoid the exit costs which are so high for steel and auto companies, and I believe the incentive that we are talking about—that the Brock task force was focusing on was probably in the area of retraining of assistants to plants, of giving them aid or help to get through pinch points or to make it possible for them to make product shifts or get retraining for new customer lines.

But we have tremendous support for both short and long-term lay-offs in most of the large companies already in place, and I am saying to you that imposing another cost burden on top of that is not going to make those plants competitive. It is going to make them less competitive. That leads to plant closings.

Mr. MARTINEZ. The time of the gentleman has expired.

Mr. Kildee.

Mr. KILDEE. I have no questions at this time.

Mr. MARTINEZ. Before I ask Mr. Cass Ballenger if he has any questions, let me introduce a new member of the committee that has joined us, Mr. Fred Grandy from Iowa.

Mr. Ballenger.

Mr. GRANDY. Thank you, Mr. Chairman.

Mr. Ballenger is first.

Mr. BALLENGER. Let me speak from a different viewpoint, and ask questions from a different viewpoint. We are speaking here to two of the largest industries in the country and basically they both have mentioned the difficulties of small business. I think everybody today recognizes that the creation of jobs in the country is coming

from small business. I represent a small business which I own, and I think I could answer some of Mr. Clay's questions about the availability of fringe benefits.

A company as small as mine cannot plan on situations like that. Let me give you an exact example of what occurred. We make plastic bags. We contracted with Proctor and Gamble for disposal bags for lady's sanitary napkins. The lady's sanitary napkins are the same by all companies, so they run gimmicks. They did not give us a contract. They just told us they would like us to go into business to produce these things with a billion bags and they told us at the beginning that it might very well be short-term and it might be long-term. We never did know.

So, in that particular situation, if this bill had been passed, I guess we would have had to have notified our employees as we hired them that they were likely to be laid off because we did not know when Proctor and Gamble was going to call quits.

We had to run two months ahead so we could get immediate delivery and, so, finally, when Proctor and Gamble came to us and said, we have changed, we are going to over-wrap each individual napkin, we do not need your business anymore, we had two months supply sitting on the floor, yet they would not let us ship the two months supply.

I just multiplied it out. If you laid off fifty employees, which this case involved, fifty employees for thirteen weeks at $6 an hour for forty hours a week, it adds up for a small company of a cost of $156,000. Now, I realize for many billions of dollars are minor things and even millions of dollars are minor to these large employers. However, for a small company, $156,000 is going to close your doors, first of all. And if you have made the announcement and you have got the bank recognizing that you might have some difficulty with the rest of your company, you will have further trouble.

I just cannot see that anybody is looking at the difficulty this is going to cause the small employers, and I would like to ask Mr. Johnston, in the multi-area that you employ, in the steel business and oil and gas business if you laid off twenty people, twenty-five people in Texas in the oil business and twenty-five people from some steel plant somewhere, would that cause notification, in your considered opinion?

Mr. JOHNSTON. Well, we think it very well could require that kind of notice, but there is nothing in here that says you cannot aggregate those numbers.

Mr. BALLENGER. Did you use this to get your twenty-eight?

Mr. JOHNSTON. No, we did not, because we have in a cyclical industry like steel, which is up and down by the various product lines, you often have wide swings.

Incidentally, all those people who are involved in lay-offs have been recalled by mid-year, as markets change and order patterns changed.

I would also have to say, Mr. Ballenger, that those hundreds of millions of dollars are indeed important to us. In many parts of Ohio, we pay inactive steelworkers seven times as much as we paid shareholders.

Mr. BALLENGER. But switching back to the small business again, probably who do not have union contracts, would you say that that sort of arrangement would be standard for small business?

Mr. JOHNSTON. Well, I think small businesses again have such a wide variety of competitive requirements, product needs, geographic locations, many are union, many are not union, they vary all over the lot, and it would be hard to generalize from a specific anecdotal experience.

Mr. FORD. Would the gentleman yield?

Mr. BALLENGER. Yes.

Mr. FORD. If you look at page 35 of the bill, line 20, you find this language, "The term plant closing or mass lay-off means an employment loss for fifty or more employees of an employer at any site during any thirty day period, except as provided in Section 7[c]", and 7[c] does not provide the kind of exception that you are reading into the bill.

I do hope that both of the gentlemen indulging in this colloquy have bothered to read the bill. It is clear that you are talking about fifty jobs at a site, not fifty in Texas and fifty in Oklahoma and fifty in Michigan.

Mr. JOHNSTON. Well, I hope that is clear, Senator. It was not one of the major objections we made in our remarks or in our written submission, but in answer to the question, I have a labor agreement of a 122 pages. There are thousands of arbitration cases under that. Every word has been intensively argued and aggressively pursued with efforts to expand on what we thought was the original commitment. That is part of the bargaining process.

Mr. FORD. You do not believe that we will interfere with that collective bargaining agreement with respect to this?

Mr. JOHNSTON. I think that employees will aggressively pursue whatever rights are provided by the Congress in bills of that nature, yes, with courts, with arbitrators, and whatever remedy is available.

Mr. MARTINEZ. The time of the gentleman has expired.

Mr. Hayes.

Mr. HAYES. Thank you, Mr. Chairman.

It is really impossible to do justice to the discussion of the proposed legislation with these gentlemen who obviously are opposed to it based on their testimony. I have a five minute time limit, so I am going to be very, very brief.

Mr. MARTINEZ. I appreciate that, Mr. Hayes.

Mr. HAYES. The title of the bill itself, Employment and Training Assistance, is a part of the ATPA. It is certainly not a cure-all for what ails us in the whole area of plant closings and unemployment. I guess I spend more time dealing with those victims of some of the decisions and as any other member of this committee. In the past month, I have been in Oakland, California, Chicago and South Chicago, where USX just temporarily, I guess, settled its differences with the union and people have returned to work.

The employees at LTV Corporation are in the same area and are hurting. Yesterday, I was in Detroit. On Saturday, I was in Ohio meeting with a group of workers who have been affected by the close downs, who asked us legislators to do something about helping them in their plight.

Now, my question that I would like to direct to any of these three gentlemen from the corporate interests, whose purpose, I guess, for all the moves you make for closing a facility is to improve your profit position, but you are dealing with human beings and the family structure, which is completely destroyed in some of these areas where you make these decisions.

If you are in disagreement with the proposed legislation, 1122, what do you see as an alternative or let me know as a congressman what—if you think we should do something, maybe 1122 is in part the answer, what are the specific areas so I can understand that you think ought to be changed and what are the changes that you are suggesting?

We have got to do something about helping people, human beings are suffering here, and we have got to do something. What do you suggest? We cannot forget them.

Mr. GEIGER. Again, my opening remarks——

Mr. HAYES. I missed it. I am sorry.

Mr. GEIGER. Urging this committee that Parts A and B had a purpose. Now, I represent the body that served for thirteen months in the Brock task force. We wrestled with these problems not superficially but in depth and feel that we can make a major contribution to the policy changes in this country for the dislocated worker through the Brock task force recommendations, and we support that part of the bill.

Mr. HAYES. That part of a retraining program?

Mr. GEIGER. Yes.

Mr. HAYES. What about placement? Where do they go?

Mr. GEIGER. That is also part of the whole thing. Giving people guidance on vocational guidance, changing careers literacy training, if that is appropriate. There are recommendations throughout the report in support of the dislocated worker.

The question we get here is not—and our argument fundamentally is, that is the focus where we should be at. If we get them readjusted because change is inevitable and it is going to occur, but we are not saying no to 1122. We are saying no to the provisions, some of the provisions of 1122.

Mr. MARTINEZ. The time of the gentleman has expired.

Mr. FORD. Mr. Chairman?

Mr. MARTINEZ. Yes.

Mr. FORD. I do not want to leave the misconception on the record on something I said. I read from Section 351, paragraph 2, and I read a citation on the exception in Section 7C. This is from an old draft of the bill. When the bill was redrafted, it should properly read Section 354D, and then I call the attention to 354D. It leaves it to the employer to establish that it was not for the purpose of avoiding the requirements of the bill.

So, there is a provision for aggregation. I would hope that you would look at it. It is on 354D. There is no 7C. That is a typographical error on the citation I cited.

Mr. MARTINEZ. Thank you, Mr. Ford. Duly noted.

Mr. Grandy.

Mr. GRANDY. Thank you, Mr. Chairman.

I was unable to observe all of your testimony. So, I will just ask a general question. I apologize to the committee if it has already been addressed.

I assume from your point of view notification does not require worker readjustment; in other words, it is possible to go into a worker readjustment program without providing notification, is that correct?

Mr. SOUTAR. That is in the Administration bill.

Mr. GRANDY. Right.

Mr. SOUTAR. Assumes no mandatory notification.

Mr. GRANDY. But does that exist in reality? I mean, can you cite instances in the private sector where there would be a worker readjustment program pending notification or without notification where you might begin to retrain, whether it is literacy or whether it is a reassessment of skills?

Mr. JOHNSTON. I am not sure I understand the precise thrust of your question. Do we have instances where we are involved in retraining, where we have not given notification? We probably have an industry in the aggregate more education than training going on than in the education industry. It is a rather—it is a constant requirement to keep skills updated and a whole range of employee groups.

Typically, I think in any study of plant closing or plant closing benefits, probably steel and auto industries should be more of a model than a target. We provide already long contractual notices and a wide variety of benefit support systems which I have alluded to.

I am saying that it does not make sense to me to impose on top of those another round of what I view as litigious potential requirements on those large industries. I believe that typically we do not have a problem so much with the shutdown as we do with the layoff notice.

Mr. GRANDY. Do you address the need, though, of, taking an example, foreign competition? Perhaps a division that will be closing down, do you then take it upon yourself, the private employers, to retrain your workers for other areas within your industry without notifying them of a plant closing?

Mr. JOHNSTON. Well, we have typically in my company, for example, what we call an inter-plant job opportunity program. Anybody who is laid off from one plant, who has rights ahead of any new hire for employment in other plants covered by that labor agreement.

Typically, if you are in a contracting industry, you have the seniority rights of employees in the existing plant, and that limits the number of inter-plant job opportunities that may be available. The problem with a contracting industry and an industry fighting world over-supply is that you do not have the opportunities to provide employment within that same skill group because we are not making products that may provide opportunities.

We are in businesses which are contracting typically in steel and auto and in some of our basic industrial components, but we can offer the training. One of the big challenges is what to train for. Nobody has been able to forecast that too well. Sometimes training has turned out not to lead to availability of employment.

Mr. GRANDY. Thank you, Mr. Chairman.

Mr. MARTINEZ. Mr. Jontz.

Mr. JONTZ. Mr. Johnston, when you cite in your written testimony your belief that during the first six months of 1986, had the notice and consultation requirements been in effect, there would have been twenty-eight different instances——

Mr. JOHNSTON. None of those were aggregated. Those were all within separate individual plants.

Mr. JONTZ. Yes, sir. Can you describe for me why USX would find that requirement burdensome?

Mr. JOHNSTON. Because it would have required us to give notices long before we had the market event that could have given us a 180 days. In other words, we did not know a 180 days in advance that we were going to have those order patterns changed.

Mr. JONTZ. Excuse me. All of those twenty-eight times, did it involve employees that would have been a 180 day requirement?

Mr. JOHNSTON. No, no. Not all 180. Some 90.

Mr. JONTZ. Some 90.

Mr. JOHNSTON. Some would be 90 days. Some would be smaller than that.

Mr. JONTZ. Actually, out of those twenty-eight times, your own testimony says that three of those would have involved the lay-off of more than 200 people.

So, what I am asking is what would be burdensome about the requirement that you have to give a 180 days if you are laying off more than a hundred people?

Mr. JOHNSTON. I am saying we do not always know that far in advance.

Mr. JONTZ. Then, why would you not be exempt under the subsection?

Mr. JOHNSTON. Well, we might very well be, but we have a labor agreement now under which we have bargained out the various rules in place with our union about when and how to give notice, and if we fail that obligation, they have an arbitration remedy.

Mr. JONTZ. I guess my question is this, then what is so unreasonable about what is in the bill?

Mr. JOHNSTON. Because you would be required in all of those circumstances to demonstrate that you have met the good faith requirements, that you have provided all the information, that you have satisfied the collective bargaining agent that it was a prudent business decision, and you can be challenged in every one of those instances.

Mr. JONTZ. There is nothing in here about anything other than having reasonable times and having consulted in good faith. I do not understand what is so difficult about that. Take the USX Gary Works. I do not understand what is so difficult about the requirements here.

Mr. JOHNSTON. Well, let me tell you what is difficult about it, Mr. Jontz. If you provide a legislative remedy on top of a contractual remedy which gives the burden of proof to an employer, every time he wants to make a lay-off, which is given to him on short notice by a customer, you then have to consult with all of those agencies and be subject to a test in which you have the burden of

proof you have made a very litigious remedy available to employees who will aggressively pursue it.

Mr. JONTZ. You need to look at the language at the bottom of page 37 of the bill.

Mr. JOHNSTON. Well, you need also to experience perhaps what I have over the years of determining what is reasonable or unreasonable in those circumstances before third parties.

Mr. MARTINEZ. The time of the gentleman has expired.

Mr. Gunderson.

Mr. GUNDERSON. No questions at this time.

Mr. MARTINEZ. Mr. Sawyer.

Mr. SAWYER. Thank you, Mr. Chairman.

Let me just back off for just a second. I guess I would have to agree that the sense of conscious over the last decade or so has changed effectively. There certainly have been different practices. Perhaps we are seeing a decade of change.

I suppose I understand at least to the degree that one who is not involved in those previous arguments, discussions, previous discussions, that the character of the debate over the nature and potential for litigious remedies, but I have—I think I have heard you clearly that there is room for discussion, particularly with regard to those areas.

If, in fact, there were room for that kind of discussion and a movement toward the kind of specific exception that Mr. Jeffords talked about, would that lead to a change in your fundamental position on mandatory notice of some character or other, or is the position so fundamentally unalterably opposed to mandatory notice of one kind or another that discussion of a remedy does not make sense?

Mr. GEIGER. Well, we have tried to express that in several different ways in the hearing, but let me try again. Again, we think the fundamental need to maintain our competitiveness is to manage our businesses in very unique and not in standardized ways.

All we are saying is we have recognized that there are many ways to address the problems. First of all, the growth in our own voluntary recognition and addressing of the problems. Secondly, participating in a very constructive way in the Brock task force. Members of management recognizing there is a problem. We are not looking at this as if it were going to go away. We are not looking at restrictive legislation that will inhibit our ability to be as flexible and as competitive as possible.

Simply put, we do want to address the problems of the displaced worker. We think the Brock task force recommendations can improve on the public policy that exists today, and we support that.

Mr. SAWYER. I understand that, but I do not think there is anything wrong with sitting here and saying that you are just unalterably opposed to any kind of mandatory notice at all, but if that is the case—I mean, is that what you have just——

Mr. GEIGER. That is what I said.

Mr. SAWYER. Okay. Thank you, sir.

Mr. MARTINEZ. Thank you, Mr. Sawyer.

Mr. Gunderson.

Mr. GUNDERSON. Thank you, Mr. Chairman.

The reason I passed the earlier time around was I was trying to check a couple of things in the proposed legislation here.

Would any of you be willing to comment on the section of the bill which requires disclosure of various information for purposes of consultation? On page 40, it says that the information an employer discloses shall be subject to such protective orders as the Secretary may issue.

Can you anticipate what type of protective orders would protect your internal information?

Mr. JOHNSTON. Well, I think the—one of the provisions that we are troubled by in the bill is the requirement that before you would make certain disclosures or mass lay-offs, and I cannot remember all the detail of this forty or so page bill at the moment, is that you have got to share what we would regard as privileged financial information.

I have been involved with even our own labor contract with union lawyers who have attempted an arbitration to expand that to saying you have to satisfy us that in our business judgment this is a proper closure before you have the right to make it.

Now, we have prevailed on that in arbitration, but we have very serious problems with sharing entrepreneurial or competitive pricing information. I think these are typically sought in financial disclosure requests, and I have had a lot of experience with that is exactly what has been demanded of us.

It was demanded of me in the most recent steel negotiations which, of course, we refused to do for anti-trust as well as entrepreneurial reasons. But I do not know how you could hold that protective order when you have union members on committees who would be receiving that, who are—would be difficult to seek any effective enforcement against, and that is one of the concerns we have with the kinds of disclosure.

I think our steelworker union in our recent negotiations was seeking not only to represent employees but to say, in effect, that unless our business judgment is satisfied, we would like to have plant closing language which restricts you to doing anything like that except as we have agreed, and I do not think that is something that can be taken from shareholders without lots of problems.

We bargain in good faith, and we have accepted many limitations on our right to manage unilaterally. I think this one stretches that beyond the requirements certainly of the labor code as it exists to this point.

Mr. GUNDERSON. Second question would focus on definition. I notice that we did not include a definition here of unforeseeable business circumstances. Can you provide us with what you think might be a legal definition of unforeseeable business circumstances?

Mr. JOHNSTON. That is such a broad phrase. It is going to be left to a variety of interpretations by all the people against—who would be seeking enforcement of that. I think it is almost impossible, but, generally, for us, the collapse of a market is many times not foreseen. People in competitive businesses in market economies are making the risk bets all the time on which markets, which cus-

tomers, which products are going to be made, and sometimes we are right and sometimes we are wrong.

Sometimes competitors cannot agree on that and many times our customers do not know. We have seen many of our customers tell us they were going to order in certain order patterns and then their own products did not sell in the marketplace to support that.

Mr. MARTINEZ. The time of the gentleman has expired.

The other way to look at that one particular phrase, as I saw it, is that it is a loophole big enough to drive a truck through. But here again, it depends on what perspective we are looking at it from.

I want to thank the panel for being with us today and providing us with your testimony.

Thank you.

Mr. JOHNSTON. Thank you for the opportunity to give it.

Mr. SOUTAR. Thank you.

Mr. MARTINEZ. The second panel is Owen Bieber, President of United Automobile, Aerospace, Agriculture Implement Workers of America; and Mr. William Wynn, President of United Food and Commercial Workers, International Union; and Dr. Howard—Mr. Howard D. Samuel, President of the Industrial Union Department.

Here again, while you are being seated, let me ask you to summarize your testimony; written testimony will be entered into the record in its entirety.

The last two members of that panel are Mr. Thomas Fricano. Is that the way you pronounce it?

Mr. BIEBER. He is not here.

Mr. MARTINEZ. He is not here.

Mr. BIEBER. Mr. Fricano.

Mr. MARTINEZ. All right. Assistant Regional Director of Region 9, U.A.W., accompanied by Norm Harper, President of Local 2100, U.A.W., and Mr. Dave Steinwald, Shop Chairman, Local 2100, U.A.W..

Now, I understand they want to appear after this panel.

Mr. BIEBER. Mr. Chairman, we thought you might be interested in briefly having these people present to you a most recent case of Trico in Buffalo, New York. I think it illustrates very keenly the advantage of advance notice and opportunity to set down and to discuss with management alternatives which resulted here in some job loss but the retention of a considerable number of jobs. A very recent case.

Mr. MARTINEZ. I would be very glad to do that, Mr. Bieber. Then, why do you not commence and try to keep your summarized statements to five minutes?

Mr. BIEBER. Let me suggest that maybe Mr. Samuel, who also was on the task force, can best lead off and then myself and Mr. Wynn will complement his statement.

Mr. MARTINEZ. Very good. Mr. Samuel.

STATEMENT OF HOWARD D. SAMUEL, PRESIDENT, INDUSTRIAL UNION DEPARTMENT, AFL-CIO

Mr. SAMUEL. Thank you, Mr. Chairman.

We have tried to plan our testimony to avoid duplication and to take up specific issues in regard to the 1122.

I think some of my testimony has already been assumed by the previous discussion of the committee with the earlier panel. You all are aware, I think, that the task force, to the surprise of many of us, did achieve a considerable degree of unanimity on the major part of the program which is incorporated in 1122.

The one area, that we did not agree on was in the area of mandatory advance notice. We did agree in connection with advance notice, that it was necessary to a successful adjustment process.

I think in response to an earlier question by Mr. Grandy, every piece of evidence that we read over the period of the task force's consideration, the evaluations by various private universities and of the government itself, that a successful adjustment process really does depend on reaching the worker long before he or she walks out of the plant gate for the last time.

Also, we did agree partly on the basis and largely on the basis of figures and statistics which were developed by the Bureau of Labor Statistics and by OTA that notice is only given in a small proportion of cases, that it is not a common occurrence. We tried to come to some agreement on the kinds of incentives or disincentives that would make advance notice the rule rather than the exception. We were not able to do that, and, so, it is up to this committee and to the Congress to decide.

The only additional point I would like to suggest is that much of the evidence against mandatory advance notice, unfortunately, depends on very special cases. Very large companies that are bound by union contracts to give advance notice, of course, they feel that a mandatory provision is not necessary.

There are not that many large companies that are bound by those contracts. As a matter of fact, the evidence that OTA developed shows that large companies and small companies give advance notice to the same degree, inadequately. There is no difference between companies employing more than 500 people and companies employing fewer than 500 people. They each give advance notice on about the same terms. Less than fifty percent of blue collar workers get advance notice, regardless of the size of the company.

The other kind of case which is frequently given is the very small company, the mom and pop shop, that cannot possibly afford it. It seems to me that the bill does provide exceptions to permit those kinds of companies that simply cannot do it for a legitimate reason to avoid the penalties of the bill.

So, I hope that the committee and the Congress in discussing this issue deals with the issue as a whole with the idea that the vast mass of American industry by and large is capable of giving advance notice, but by and large does not give it.

The only other issue I would like to mention is the question of who are the displaced workers because there is a good deal of misapprehension about that.

The statistics developed during the course of the deliberations of the task force and refined since then by the Industrial Union Department (I have included a copy of that analysis with my testimo-

ny) suggests that a number of commonly-accepted notions about displaced workers are quite inaccurate.

For example, it is widely believed that displaced workers are largely to be found in the so-called Rust Belt, Midwestern states with major concentrations of manufacturing. This is not true. Information provided by two recent Bureau of Labor Statistics dislocated worker surveys demonstrate that dislocation is a national problem with the highest rates of dislocation in two regions of the south and the Rocky Mountain states.

Industrial Midwest is a region with the fourth highest dislocation rate. It is important to note that I am referring to rates of dislocation, not the absolute numbers of dislocated workers. However, it is true that the greatest number of dislocated workers come from the industrial Midwest. This is true only because this region has a proportionately larger share of the population, not because it is proportionately harder hit by plant closings or mass lay-offs.

Another common assumption is that most dislocated workers are relatively well-paid workers in auto, steel, and other smokestack industries. To the contrary, the two recent BLS surveys show that a majority have below average earnings. Dislocation hits the middle income worker the hardest. The highest rates of dislocation are within that group of forty percent of the work force below the average wage.

It is probably no surprise to learn from these surveys that minorities experience the highest rate of mislocation, particularly Hispanics, and that manufacturing workers experience high rates of dislocation also. However, it is not only a problem for the manufacturing industry.

Several non-manufacturing industries also experience very high dislocation rates, including mining, construction, transportation, and wholesaling.

Finally, can we answer the question: is the problem of dislocation getting better or worse? Several studies in addition to the BLS surveys have examined this question and they all point to the inescapable conclusion that the problem of dislocated workers has worsened in the 1980s.

The economy has been experiencing higher levels of permanent job loss in the past few years than 10 years earlier. For example, the rate of unemployment has risen from 2 percent of the labor force in 1973 to 3.4 percent in 1985. However, moreover, the current recovery has not eliminated the problem since this same percentage of the work force lost their jobs in 1985 as in 1983.

In summary, Mr. Chairman, we are dealing with a serious problem, with a national problem, and with a growing problem. I urge the members of the committee to deal with it promptly and effectively in terms which will be advanced by my colleagues on this panel.

[The prepared statement of Howard D. Samuel follows:]

Statement of the Industrial Union Department, AFL-CIO

By Howard D. Samuel, President

On the Economic Dislocation and Worker Adjustment Assistance Act (H.R. 1122)

Before the Subcommittee on Labor-Management Relations

Of the Committee on Education and Labor

U.S. House of Representatives

March 17, 1987

Industrial Union Department, AFL-CIO
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Howard D. Samuel, *President*
Elmer Chatak, *Secretary-Treasurer*

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I am Howard D. Samuel, president of the Industrial Union Department (AFL-CIO), representing 53 national and international unions and approximately five million members.

With me today are Owen Bieber, president of the UAW, and William H. Wynn, president of the United Food and Commercial Workers, two of the largest unions in the AFL-CIO, with members working in virtually every sector of our economy.

We are here today to testify on behalf of H.R. 1122, the Economic Dislocation and Worker Adjustment Assistance Act, which would put this country, for the first time, on the path of meeting the needs of displaced workers.

The goals of this bill have been high on the agenda of the American labor movement for almost two decades. Much of the factual material that underlies the thrust of the bill, as well as some of the provisions of the bill itself, were developed during the deliberations of a Department of Labor Task Force, which issued its report, "Economic Adjustment and Workers Dislocation in a Competitive Society," just two months ago.

I was pleased to serve as a member of this Task Force, and senior officials of the UAW and the UFCW also served as members. It is worth noting that the Report was signed by 20 of the 21 members of the Task Force, including representatives of business as well as labor, state and local public officials, academicians, Republicans and Democrats alike. None of us subscribed to every single conclusion or recommendation; all of us supported the basic thrust of the report and the basic reason for its importance.

What is this reason? It is that the rates of economic change and economic dislocation during the past two decades have been increasing. There are many causes, principally the growing pressure of international competition, and the accelerating pace of technological change. The results are not difficult to quantify: in the five years between 1981 and 1986, almost 11 million workers lost their jobs permanently, that is, as a result of a plant closing or of a permanent layoff.

To a certain extent, some plant closings and permanent layoffs are an inevitable part of our economic structure. But at the

same time we must recognize that plant closings and mass layoffs also leave in their wake major human and economic problems--which this country has done very little to meet.

The human problems have been well documented. Large-scale, long-term unemployment leads to despair, illness, alcoholism, family breakdown, even to higher suicide rates. Communities are often devastated, left without the resources to carry on normal municipal responsibilities much less to shoulder the added weight of the unemployed.

The economic loss is also significant. Experienced workers who cannot find a new job using their skills represent a tremendous economic drain to the entire nation. The loss of their skills and their productivity, plus the added welfare costs, represent a handicap which this nation can ill afford.

One of the principal goals of the legislation you are considering, therefore, is to protect and enhance the nation's human resources, a responsibility we have ignored for too long.

In one major area the DOL Task Force could not agree, and that is in respect to the question of advance notice. All of us did agree that advance notice was necessary to a successful adjustment process, that it did not have a harmful effect on employers, and that it is given in only a small proportion of plant closings and mass layoffs. We in the labor movement feel strongly that legislation should provide incentives or disincentives strong enough to assure that advance notice becomes the rule rather than the exception.

We are pleased that H.R. 1122 does just that.

Who are the displaced workers? Statistics developed in the course of the deliberations of the DOL Task Force, and refined since then by the Industrial Union Department, suggest that a number of commonly accepted notions about displaced workers are quite inaccurate. (A copy of the IUD analysis is attached to my oral testimony for the hearing record.)

For example, it is widely believed that displaced workers are largely to be found in the so-called Rust Belt, the Midwestern

states with major concentrations of manufacturing. This is not true. Information provided by two recent Bureau of Labor Statistics Dislocated Workers Surveys demonstrate that dislocation is a national problem, with the highest rates of dislocation in two regions of the South and in the Rocky Mountain states. The industrial Midwest is the region with the fourth highest dislocation rate.

It is important to note that I am referring to rates of dislocation, not the absolute numbers of dislocated workers. While it is true that the greatest number of dislocated workers come from the industrial Midwest, this is true only because this region has a proportionately large share of the population--not because it is proportionately harder hit by plant closings or mass layoffs.

Another common assumption is that most dislocated workers are relatively well paid workers in auto, steel and other smokestack industries. On the contrary, the two recent BLS surveys show that a majority had below average earnings. Dislocation hits the middle income worker the hardest, with the highest rates of dislocation in the forty percent of the work force below the average wage.

It is probably no surprise to learn from these surveys that minorities experience the highest rate of dislocation, particularly Hispanics, nor that manufacturing workers experience high rates of dislocation. However, several non-manufacturing industries also experience very high dislocation rates, including mining, construction, transportation and wholesaling.

Finally, can we answer the question, is the problem of dislocation getting better or worse?

Several studies, in addition to the BLS surveys, have examined this question, and they all seem to point to the inescapable conclusion that the problem of dislocated workers has worsened in the 1980's. The economy has been experiencing higher levels of permanent job loss in the past few years than ten years earlier. For example, the rate of job loser unemployment has risen from 2 percent of the labor force in 1973 to 3.4 percent in 1985. Moreover, the current recovery has not eliminated the problem since the same percentage of the work force lost their jobs in 1985 as in 1983.

In summary, we are dealing with a serious problem, with a national problem, and with a growing problem. I urge the members of the committee to deal with it promptly and effectively--in terms which will be advanced by my colleagues on this panel.

Mr. MARTINEZ. Mr. Bieber.

STATEMENT OF OWEN F. BIEBER, PRESIDENT, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, INTERNATIONAL UNION, U.A.W., AFL-CIO

Mr. BIEBER. Thank you, Mr. Chairman.

I appreciate the opportunity you have given us to share the views of the U.A.W. on H.R. 1122.

I ask that my prepared statement be included as part of your hearing record, and I shall try to briefly summarize it.

Mr. Chairman, on behalf of the million active U.A.W. members, the several hundred thousand members who have permanently lost their jobs through plant closings and lay-offs, we wish to thank the Chairmen of both subcommittees for holding this joint hearing on H.R. 1122.

We commend you and your colleagues for introducing this critically important measure. As you know, decisions to close or move a plant or to permanently cut back a work force can have far-reaching profound impacts. Yet, these decisions are usually made behind closed board room doors, beyond public scrutiny or control, based solely on corporate economic self-interest, and without adequate regard to the enormous economic and social costs which such decisions can impose on others.

As a trade unionist, Mr. Chairman, it is difficult for me to ever acknowledge that a plant may have to close. I know only too well the terrible human cost associated with that. Yet, I recognize that in a dynamic economy, change is essential and some plants may close.

But in American manufacturing industries today, I am convinced that far too many plants are closing unnecessarily. Moreover, when a plant's closing may be justified, the tremendous economic and social cost it imposes should be shared equitably.

Government has a duty to inject social responsibility into this process and protect workers and communities against the devastating consequences of economic change.

General Motors' announcement that it will close 11 plants employing some 29,000 workers is only the most visible example of what is happening to hundreds of thousands of workers throughout the economy.

Recessions, import penetration, technological change all have taken a severe toll on jobs. According to the Bureau of Labor Statistics, each year one and a half million workers lose their jobs in plant closings or in permanent lay-offs. The most extensive government study to date shows that no region, industry, or sector of the work force is spared. Contrary to popular misconception, the problem of economic dislocation is not confined to northern industrial states.

H.R. 1122 represents an important first step towards a national policy to prevent or minimize the harmful consequences of economic dislocation. Under this bill, the surprise of sudden plant closings and permanent lay-offs would be prevented by requiring employers to provide advance notice ranging from 90 to a 180 days, depending

on the number of employees affected by the plant closing or substantial lay-offs.

Workers would also have an opportunity to discuss the decision, since employers would be required to consult with employees about alternatives, and I underscore alternatives, to a closure or lay-off. Where alternatives could not be found, there would be some time in the program to help workers and the communities adjust to the permanent job loss.

Based upon the recommendations of the Secretary of Labor Brock's plant closing task force, this bill provides for creation of a federal displaced worker unit in the Department of Labor. This unit would coordinate an expanded program of education, training and re-employment assistance.

The bill also would require that each state set up rapid response teams on notice of a closing or lay-off. This would provide what I think is very badly needed counseling, training, job assistance, and vocational and classroom training.

Advance notice of plant closings, mandatory consultation and an adjustment program are an important down payment toward a national policy we so badly need to deal with economic dislocation.

Indeed, we would prefer that the period of notice and required consultation be increased beyond the three to six months being proposed. I would point out, Mr. Chairman, that twenty years ago, no less authority than former Secretary of Labor George Shultz stated, and let me quote him, he said, "There should be at least six months and preferably a year's advance notice", end of Mr. Shultz's statement.

Moreover, workers who permanently lose their jobs need adequate levels of severance pay, health insurance, and other fringe benefits continuation. Transfer rights, mortgage assistance, and relocation assistance are also needed. In addition, there is a need to develop an early warning system which would allow sources of potential dislocation to be identified early before they become a reality and which would trigger appropriate action to prevent dislocation.

Mr. Chairman, I would urge the members of the committee to look at my full text and look especially at page 11 and 12, where we give some examples of what can happen on the plus side where adequate notice is given, where two examples are given in that testimony of plants that were saved.

I would like to also point out that in a recent pastoral letter issued by the U.S. Conference of Catholic Bishops entitled Catholic Social Teaching and the U.S. Economy, the rationale for legislation such as H.R. 1122 was clearly stated.

It is not only labor leaders and religious leaders who offer arguments in support of advance notice. The report of the Secretary of Labor's Task Force on Economic Adjustment and Dislocation, President Reagan's Commission on Industrial Competitiveness, The Office of Technology Assessment, and business organizations such as the Committee for Economic Development, and the Conference Board, have all stressed the importance of advance notice.

Although there is widespread agreement on the importance of advance notice, very few workers receive adequate notice before they lose their jobs. According to the General Accounting Office,

less than one in ten blue collar workers receive more than 90 days notice of a plant closing or mass lay-off. While white collar workers get an average of two weeks notice, blue collar workers receive an average of only seven days. Blue collar workers in non-union establishments receive an average of only two days advance notice.

The GAO study also shows that very few workers receive placement or financial assistance after they lose their jobs. Only one in three blue collar workers receive severance pay or extension of health insurance. Only one in five blue collar workers is offered job search assistance and only one in ten a transfer option or career counseling.

The bill also proposes two pilot projects about which my views are set forth in my written statement that has been submitted for the record.

Finally, I want to state for the record my opposition to several aspects of the Administration's worker readjustment proposal. In their proposal, an employer would receive a $200 credit per employee against state unemployment compensation taxes if advance notice is given before plant closings or mass lay-offs.

I believe this approach is misguided. Why should we take money away from an already under-funded unemployment insurance system—in 1986, only one-third of the unemployed received unemployment insurance benefits—and use it as an incentive to entice employers to do what they should be doing anyway.

We strongly oppose folding the Trade Adjustment Assistance Program into the Worker Adjustment Program, which has also been proposed by the Administration. At a time when the trade deficit is at record levels, it makes little sense to us to eliminate the only program that compensates workers who have lost their jobs because of government trade policy. Notification, consultation and adjustment assistance as proposed by H.R. 1122 are essential beginnings of a badly needed national policy and should be adopted without unnecessary delay.

In the last Congress, as you all know, when a plant closing bill was taken up in the House, the Secretary of Labor urged defeat of that bill until he could set up a task force to study the problem. The task force has issued its report. There can be no excuse for further delay.

Let me just quote a very small section of that task force report. It said, "Worker displacement is a problem that will not simply disappear if nothing is done. The problem is of significant magnitude and urgency that it demands an effective coordinated response with special priority by both the private and the public sectors."

Mr. Chairman, H.R. 1122 is an important first step towards effectively addressing this problem. The U.A.W. strongly supports the notice, consultation, and adjustment assistance program of this important legislative proposal.

As I briefly stated at the beginning, Mr. Fricano and two members of Local 2100 in Buffalo, New York, are here. They were involved in the most recent discussions relative to Trico, and the retention of many jobs in that area, and I would urge that at the conclusion of our discussion that you hear from those people, because I think it gives you a good insight into what can be done again if proper advance notice and consultation is given.

I appreciate very much the opportunity to share our views with the two subcommittees, and I will be pleased when the time comes to respond to questions which you may wish to raise with me.

[The prepared statement of Owen Bieber follows:]

STATEMENT OF
OWEN BIEBER, PRESIDENT
INTERNATIONAL UNION, UAW
BEFORE THE
SUBCOMMITTEE ON LABOR-MANAGEMENT RELATIONS AND
SUBCOMMITTEE ON EMPLOYMENT OPPORTUNITIES
OF THE HOUSE COMMITTEE ON EDUCATION AND LABOR
ON
H.R. 1122— ECONOMIC DISLOCATION AND WORKER ADJUSTMENT ASSISTANCE ACT

MARCH 17, 1987

Mr. Chairman, on behalf of one million active and currently employed UAW members and the several hundred thousand members who have permanently lost their jobs through plant closings and layoffs, I wish to thank the Chairmen of both Subcommittees for holding this hearing on H.R. 1122. We appreciate the opportunity to share with you the UAW's views on H.R. 1122, the proposed Economic Dislocation and Worker Adjustment Assistance Act, and to support the advance notice, consultation and adjustment assistance provisions of this bill.

You are well aware of the personal misery for workers and their families, the economic and social costs for communities, and the general loss to the economy created by corporate decisions that result in permanent dislocation. Decisions to close or move a plant, or to permanently cut back a workforce, have far-reaching, profound impacts. Yet these decisions are often made behind closed board room doors, beyond public scrutiny or control, based solely on corporate economic self-interest, and without adequate regard to the enormous economic and social costs which such decisions can impose on others.

As a trade unionist, Mr. Chairman, it is difficult for me ever to agree that a plant must close. I know only too well the terrible human cost. Yet I recognize that in a dynamic economy, change is essential and some plants will close. In American manufacturing industries today, however, I am convinced that far too many plants are closing needlessly. Moreover, even when a plant closing may be justified, the tremendous

economic and social costs it imposes should be shared more equitably. We believe government has a duty to exercise social responsibility and protect workers and communities against the devastating consequences of economic change.

Instead of helping, in far too many cases government policy actually makes the problem worse. Examples of harmful policies include a federal tax code that subsidizes corporate decisions to export U.S. workers' jobs, and international trade policies which are weak and ineffectively enforced.

Impact on UAW Members Has Been Devastating

General Motors' announcement that it will close 11 plants employing 29,000 workers is only the most visible example of what is happening to thousands of UAW members in auto, agricultural implement, construction machinery, the parts supplier industry, and millions of other workers throughout our economy.

The hardship faced by workers who lose their jobs was documented by a study of unemployed Michigan auto workers conducted by the Social Welfare Research Institute of Boston College. More than 100,000 Michigan auto workers experienced permanent or indefinite layoff between 1979 and 1982. By the summer of 1984, 30 percent of those surveyed had not been recalled. Among those still on layoff, more than half were unemployed or working part-time.

The drop in income was drastic. By the last month of layoff, average weekly income for an individual fell 61 percent. Workers not only experienced a major decline in income, but also were forced to use up their life savings. Among those who had any savings, more than 40 percent used them up entirely while unemployed.

To make matters even worse, at a time when health insurance coverage was desperately needed, coverage was lost. Almost one-third of the auto workers surveyed had no health insurance coverage whatsoever at some time during their layoff.

Some workers and their families did not seek needed medical care because they could not afford it.

As for those who managed to find another job, 65 percent were in nonunion jobs. Their wages were an average 19 percent below their previous wage level and fringe benefits had been dramatically reduced. Only 63 percent of those reemployed were receiving health insurance.

Dislocation is a National Problem

It is obviously not just auto workers who are suffering. The number of workers who have been victims of plant closings and permanent layoffs is enormous. Recessions, import penetration and technological change all have taken a severe toll on jobs. According to the Bureau of Labor Statistics (BLS), each year 1.5 million workers lose their jobs in plant closings or permanent layoffs.

The most extensive government study to date, undertaken by the BLS, shows that no region, industry, or sector of the workforce has been spared. Contrary to popular misconception, the problems of economic dislocation are not confined to northern industrial states. In fact, from 1981 to 1986, the region with the highest rate of dislocation was the South in the area encompassing Kentucky, Tennessee, Alabama, Texas and Oklahoma. Other regions most heavily affected are the West and Midwest (see Table 1).

Nearly half of displaced blue-collar workers were jobless more than half a year, with one in five experiencing more than two years without work. Displaced black workers are unemployed twice as long as other displaced workers.

Besides the financial burden of lengthy unemployment, most displaced workers are forced to take jobs at lower pay and often are only able to find part time work. Blue-collar workers, both male and female, earn 16 percent less in their new jobs. Nearly one-third took pay cuts of more than 25 percent. Those forced into new

occupations or industries took pay cuts of 25 to 30 percent. Older workers, minorities and those less educated are especially hard hit.

At a time when plant closings and economic dislocation have increased, the federal government has cut back on adjustment assistance. From 1978 to 1986, federal expenditures (in constant dollars) for training and employment dropped 68 percent. During this same period, the number of unemployed increased from 6.2 million in 1978 to 8.2 million in 1986. To understand the actual impact of the budget cuts on the ability to provide employment and training opportunities, it is necessary to consider the resources available per unemployed person. In 1978, the federal budget provided almost $1,260 per unemployed person for employment and training. By 1983, this amount had fallen to $262. This represents a 79 percent decline in resources per person. According to the Office of Technology Assessment, the level of federal financing today serves only 5 percent of all dislocated workers.

Economic Dislocation Requires National Approach

In the absence of a responsible public policy, much of the burden for dealing with plant closings and permanent job loss has fallen to the labor movement. In the case of plant closings with major employers, the UAW has been able to mitigate somewhat the consequences by negotiating a variety of important job and income security provisions. At some major companies we've been able to negotiate joint union-company training programs to help dislocated workers qualify for and find new jobs.

In addition, the UAW has established community services committees, with trained union counselors, in local unions throughout the country to help members cope with personal and emotional problems. If there has been sufficient notice, counselors are able to provide an assessment of the short-term and long-range needs of affected workers on such matters as family budget adjustments, mortgage foreclosure, and family counseling.

Although our efforts have given some help to UAW members who permanently lost jobs, it isn't enough and does not reach everyone who needs help. Seldom can we negotiate sufficient protection to enable the worker to make an orderly, low-trauma transition to a new job. In many of our collective bargaining agreements, the company's economic condition has not even permitted limited protections. Moreover, the millions of unorganized workers in our country do not have the benefit of a union contract.

The problem of economic dislocation goes beyond what can be accomplished through collective bargaining. Addressing the problem requires comprehensive governmental action. A truly comprehensive approach to plant closings and economic dislocation would entail an active trade policy as reflected in H.R. 3, the 1987 version of the comprehensive trade legislation approved by the House last year. This bill proposes specific steps to reduce the ballooning trade deficit and define the denial of workers' rights abroad as an unfair trade practice. We also need an industrial policy that has as its goal a diversified, balanced, fully-employed economy.

H.R. 1122 An Important First Step

H.R. 1122, the proposed Economic Dislocation and Worker Adjustment Assistance Act, represents a necessary step toward a national policy to prevent or minimize the harmful consequences of economic dislocation. Under H.R. 1122, the surprise of sudden plant closures and permanent layoffs would be prevented by requiring employers to provide advance notice ranging from 90 to 180 days depending on the number of employees affected by the closing or layoff. Workers would also have an opportunity for input into the decision since employers would be required to consult with employees about alternatives to a closure or layoff. Where alternatives cannot be found, there would be some time and an adjustment program so workers and communities can adjust to the permanent job loss.

Based upon the recommendations of Secretary of Labor Brock's Plant Closing Task Force, H.R. 1122 provides for the creation of a federal displaced worker unit in the Department of Labor. This unit would coordinate and expand education, training and reemployment assistance. The bill also requires that each state set up rapid response teams. Upon notice of a closing or layoff, the rapid response team would visit the plant and help the employer and workers prepare an adjustment program that would provide counseling, testing, job search training and vocational and classroom training. Income support, beyond the 26 weeks of unemployment insurance, would be provided to those in training programs. The bill would allocate $980 million to fund the program. This is four times the amount of funding currently provided for adjustment assistance.

Notice, mandatory consultation and a rapid response adjustment program represent an important downpayment toward a national policy we so badly need to deal with economic dislocation. Indeed, we would prefer that the period of notice and required consultation be increased beyond the three to six months currently being proposed. Twenty years ago no less an authority than former Secretary of Labor George Shultz stated, "there should be at least six months' and preferably a year's advance notice." We know that most companies make their decisions to close a plant or permanently cut back employment months or often years in advance. Finding alternatives to such decisions made so long in advance often cannot be developed within three months. Furthermore, if alternatives cannot be found, a longer period of notification will increase considerably the chances that workers will be able to make a less painful adjustment to their job loss.

Moreover, the full range of problems growing out of economic dislocation cannot be solved through notification and consultation requirements. Workers who permanently lose their jobs need adequate levels of severance pay, health insurance and other fringe benefit continuation, transfer rights, mortgage/rent assistance, and

relocation assistance. Circumstances of older workers mandate special protections. Communities need assistance to offset tax losses and to meet increased social service needs. These are just some of the problems growing out of dislocation. In addition, there is need to develop an early warning system which will allow sources of potential dislocation to be identified early -- before it becomes a reality -- and which will trigger appropriate action to prevent dislocation. We are hopeful that it may be possible to discuss some of these concerns as H.R. 1122 makes its way through the legislative process.

H.R. 1122 proposes two demonstration programs. The first project would authorize worker training loans of up to $5,000 at below market interest rates. The second project would authorize public works employment to communities where there is high unemployment.

Mr. Chairman, we are opposed to the first demonstration project. Providing low interest loans to workers to pay for training is not an adequate substitute for a well-funded federal training policy, which provides training and education for dislocated workers. In principle, we support the second project of public job creation, but I do not believe we should limit pay to the minimum wage or 10 percent above welfare or unemployment insurance benefits.

Concerns About Administration Plan

I also want to discuss my concerns about certain aspects of the Administration's worker readjustment proposal. An employer would receive a $200 credit per employee against state unemployment compensation taxes if advance notice is given before plant closings or mass layoffs. We should not take money away from an already underfunded unemployment insurance system (in 1986 only one-third of the unemployed received unemployment insurance benefits) and use it as an incentive to entice employers to do what they should be doing as a matter of simple human decency.

Experience shows that incentives don't work. In Massachusetts, firms which receive financial assistance from state agencies must agree to accept certain voluntary standards of corporate behavior which include advance notice of plant closings. Yet data from the BLS show that in fully one-half of all plant closings in Massachusetts in the last six months of 1985, no advance notice was given. Clearly we need legislation requiring advance notice.

Another proposal in the Administration's package that we strongly oppose is folding TAA into the Worker Adjustment Program. At a time when the trade deficit is at record levels it makes little sense to eliminate the only program that compensates workers who have lost their jobs due to government trade policy.

Notice with Consultation Humane and Economically Efficient

In the recent Pastoral Letter issued by the U.S. Conference of Catholic Bishops, entitled Catholic Social Teaching and the U.S. Economy, the rationale for legislation such as H.R. 1122 was clearly stated:

> "When companies are considering plant closures or the movement of capital, it is patently unjust to deny workers any role in shaping the outcome of these difficult choices ... The capital at the disposal of management is in part the product of the labor of those who have toiled in the company over the years, including currently employed workers. At a minimum, workers have a right to be informed in advance when such decisions are under consideration, a right to negotiate with management about possible alternatives, and a right to fair compensation and assistance with retraining and relocation expenses should these be necessary."

Nor is it only labor leaders or religious leaders who offer arguments in support of advance notice. The report of the Secretary of Labor's Task Force on Economic Adjustment and Dislocation stresses that "advance notification is an essential component of a successful adjustment program." The Office of Technology Assessment states:

> "The best time to start a project for displaced workers is before a plant closes or mass layoffs begin; advance notice makes early action possible -- although it does not guarantee it. Some of the advantages of early warning are 1) it is easier to enroll workers in adjustment programs before they are laid off; 2) it is easier to enlist managers and workers as active participants in displaced worker projects before the closing or layoff; 3) with time to plan ahead, services to workers can be ready at the time of layoff, or before; and 4) with enough lead time, it is sometimes possible to avoid layoffs altogether."

President Reagan's own Commission on Industrial Competitiveness clearly recognized the importance of early notification of plant closings and other permanent job loss and the serious harm caused by failure to provide it. The Commission recommended that:

> "Where possible, early identification of the worker to be displaced should be encouraged. Delay in identifying these individuals directly contributes to prolonging the adjustment process -- a process already made difficult by the individual's denial of the problem, lack of job search skills, and absence of alternative job or occupation at a comparable wage. Employers should be urged to provide early notification of plant closings, and joint public-private efforts providing prelayoff assistance (such as those authorized by JTPA) should be emphasized."

Recent reports by business organizations such as the Conference Board and the Committee for Economic Development also point out the importance of advance notice:

> "Companies should provide as much notice as possible of decisions affecting jobs, particularly in cases of plant closings, work transfers, or automation. Advance notice allows employees the time to adjust, and management the time to plan and implement business moves in a way that minimizes hardship. Companies should also take steps to notify the local community and state agencies of pending plant closings in order to allow time for a coordinated response. (Committee for Economic Development, Work and Change: Labor Market Adjustment Policies in a Competitive World, 1986)

> "Both survey and interview participants note that advance notice is beneficial to employees and is an

> essential element in a plant closure program ... Notice is also critical because a functioning plant is, perhaps, the program's single most important resource. (Conference Board, Company Programs to Ease the Impact of Shutdowns, 1986)

Few Workers Receive Advance Notice or Placement Assistance

Despite widespread agreement on the importance of advance notice, very few workers receive adequate advance notice before they lose their jobs. According to a comprehensive survey by the General Accounting Office (GAO), less than one in ten blue-collar workers receive more than 90 days notice of a plant closing or mass layoff. The GAO survey found that 30 percent of employers gave no individual notice to blue-collar workers and another 34 percent gave two weeks or less. White-collar workers get an average of two weeks notice while blue-collar workers receive an average of only seven days. Blue-collar workers in non-union establishments receive an average of two days advance notice (see Table 2).[1]

The GAO study also shows that very few workers receive placement or financial assistance after they lose a job. Only one in three blue-collar workers receive severance pay or extension of health insurance. Only one in five blue-collar workers is offered job search assistance and only one in ten a transfer option or career counseling (see Table 3).

Mr. Chairman, despite clear evidence that voluntarism isn't working, it can be expected that some of those in the business community will argue against mandatory notice. In the past, opponents have argued that each business is unique and that a mandated notice requirement does not recognize that diversity. They further

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1. Despite claims of employers that advance notice is an increasingly common practice, evidence indicates that the percent of workers receiving less than two weeks notice has shown only the most limited improvements in over 50 years. In 1930 the National Industrial Conference Board issued a study titled Lay-off and its Prevention. Acccording to this study in 1930, 79% of industrial workers received less than two weeks advance notice. In 1983-84 according to the GAO, 64% of blue collar workers received less than two weeks notice.

have argued that an advance notice requirement will cause business to lose key employees and access to credit. Others have complained about a fear of sabotage or reduced work effort.

These claims are unfounded. The "each business is unique" argument is a rationale for flexibility in the administration of a notice requirement and not an argument against a notice requirement per se. The fear of losing key employees can be handled by means of "stay bonuses" or other incentives to employees.

Regarding loss of access to credit, it is difficult to believe that lenders are not already fully aware of the financial status of their borrowers. Moreover, the GAO study points out that less than one in ten establishments experienced a bankruptcy or financial reorganization prior to a closure or layoff. A financial emergency is the cause of a relatively small proportion of all business shutdowns or permanent layoffs.

Fear of falling productivity after notice is given is also unfounded. The Conference Board, after studying six closings in great detail, commented: "All industrial plants studied noted productivity improvements in the period following the closure announcement."

The real reason most companies don't give advance notice, and the reason they are opposed to a notice requirement, is that they don't want to face pressure from workers and communities. Yet, it is not proper behavior to intentionally withhold information simply because a corporation wishes to avoid public scrutiny of its decision, or public pressure to cushion the impact of that decision. Such behavior has no place in a democratic society.

Almost every other industrial democracy already has plant closing laws stronger than H.R. 1122. And yet, the hemorrhaging of American jobs to the foreign subsidiaries of the same companies complaining about this legislation continues unabated. Companies which shift U.S. jobs to countries with far tougher plant closing laws do

not deserve to be taken seriously when they complain that a notice requirement such as that in H.R. 1122 would be intolerable here.

Alternatives Can Be Found When Workers Are Allowed Input

Advance notice, followed by a period in which workers can offer alternatives to a shutdown, can prevent a plant from closing.

One such case, which we've reported on at other times but deserves mention here, involved General Motors. In the summer of 1982, General Motors announced that it would close its Rochester Products Division in Tuscaloosa, Alabama. According to GM, the plant was no longer profitable. Rather than accept the closure as the only course of action, the local union immediately began working on ways to save the plant. The University of Alabama joined in this effort, and together with the UAW and GM, became part of an innovative three-year tripartite agreement to save the Tuscaloosa plant from closing.

Under the agreement, methods were jointly developed for lowering the plant's operating costs. Just eight months into the project, the cost savings' target was achieved. Shortly thereafter, GM announced plans for a $14 million investment in new equipment for the plant.

Another example of a plant saved from closing involved Detroit Forge, a plant of the Chrysler Corporation. The plant was going to close in 1982 unless large-scale physical conversions were made to the facility. UAW skilled trades workers responded by developing a plan for renovation and conversion which they proposed doing themselves. The company agreed to the plan and the skilled trades workers set out to modify forge presses, rebuild machinery, and renovate buildings. The entire job of renovating was done while production was kept running in the rest of the facility.

The Tuscaloosa and Detroit Forge plants are concrete examples that there are alternatives to plant closings and permanent layoffs when concerned parties commit

themselves to work together. The successful efforts to save GM's Rochester Products Division and Chrysler's Detroit Forge plant show that a big corporation can make a plant closing decision based on incorrect or incomplete information and without adequately considering alternatives. It shows that some plants slated for closing are, in fact, viable. In the absence of a public policy requiring advance notice and consultation, however, the opportunity to save troubled but potentially viable plants is available only in a minority of cases. Such outcomes should not be left to chance. The notification and consultation requirements proposed by H.R. 1122 would provide a far greater opportunity than presently exists to assure that these opportunities can be investigated.

The Time to Act is Now

Notification, consultation and the adjustment assistance proposed by H.R. 1122 are essential beginnings of a badly needed national policy. They should be adopted immediately. For more than a decade, we have been making the case for plant closing legislation. The business community, often while recognizing the importance of advance notice, has always opposed such legislation. Nonpartisan studies by the GAO and BLS now demonstrate conclusively what we have always believed: Workers receive little notice of plant closings and few receive placement or financial assistance in the adjustment process.

In the last Congress, a mild plant closing bill was introduced in the House of Representatives. The Secretary of Labor urged that the bill be defeated pending his appointment of a task force to study the problem. The task force has issued its report. In the words of the task force report:

> "Worker displacement is a problem that will not simply disappear if nothing is done... The problem is of sufficient magnitude and urgency that it demands an effective coordinated response with special priority by both the public and private sectors."

Mr. Chairman, H.R. 1122 is an important first step in addressing this problem. The UAW strongly supports the advance notice, consultation and adjustment assistance provision of this important legislative proposal, and we commend you and your colleagues for introducing it. We are grateful to both Subcommittees and the two Chairmen for giving me the opportunity to share with you the views of the UAW on this critical legislative issue.

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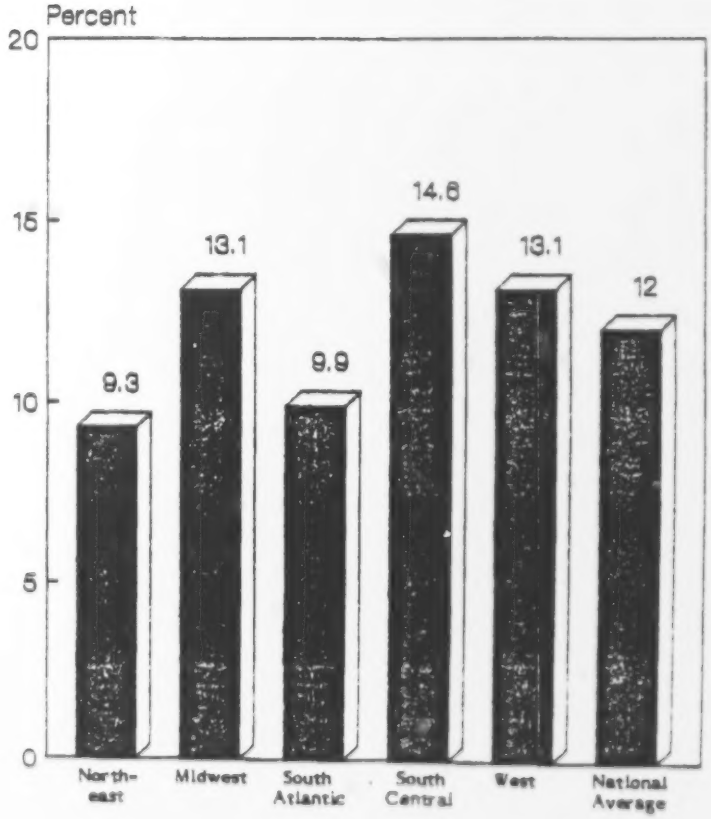
Table 1

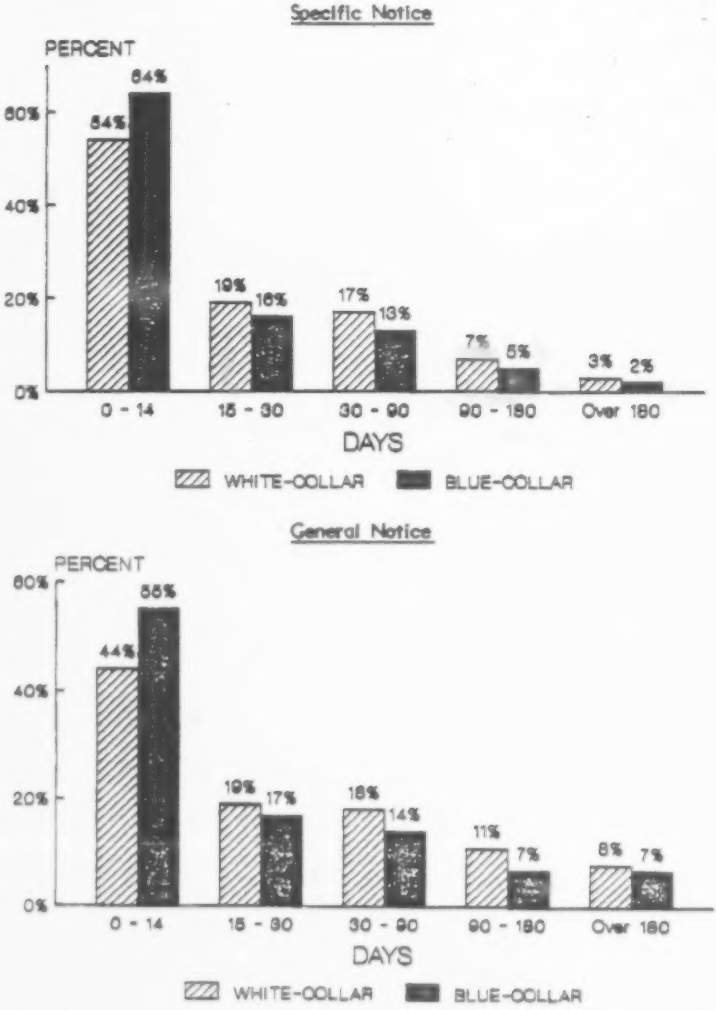
Rates of Dislocation by Region* 1981-1985



* The rate of dislocation represents the percentage of full-time workers displaced between 1981-1985.

SOURCE: Bureau of Labor Statistics

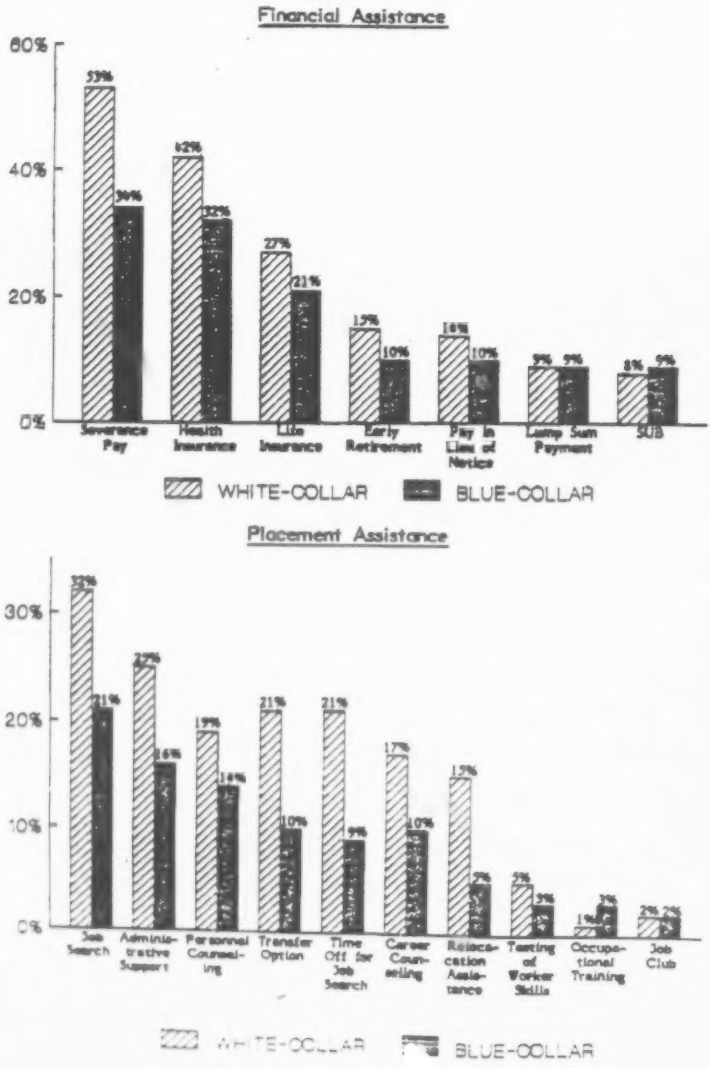
PERCENT OF ESTABLISHMENTS PROVIDING ADVANCE NOTICE*



* The GAO study defined two kinds of advance notice -- general and specific. General advance notice is intended to provide workers and the community with advanced warning but does not specify the exact date or the particular workers to be affected. A specific notice, on the other hand, informs workers that their employment will be terminated on a specific date.

Table 3

PERCENT OF ESTABLISHMENTS
OFFERING FINANCIAL AND PLACEMENT ASSISTANCE



Mr. MARTINEZ. Thank you, Mr. Bieber.
Mr. Wynn.

STATEMENT OF WILLIAM H. WYNN, PRESIDENT, UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, UFCW, AFL-CIO

Mr. WYNN. Thank you, Mr. Chairman. Members of the subcommittee.

I am pleased to testify in support of legislation which will ease the effects of economic dislocation on workers and their communities.

The UFCW strongly supports legislation that will provide workers with advance notice of adjustment assistance when their employers close facilities or go out of business. While the UFCW is usually thought of as a service trade union, rather than as a union representing workers in America's traditional smokestack industries, the impact of business closings and mass lay-offs have been felt just as severely by UFCW members as other workers.

The current merger mania that is sweeping corporate America has produced a whole new set of victims. Thousands of UFCW members in the retail food industry have been victimized by corporate raiders, take-over companies, and cannibalized by selling job-producing assets in order to repay the banks. They do not give a second thought to the workers whose labor built that asset into something worth selling.

When any business closes, the impact is felt by more than the workers directly affected. Workers in a host of other industries, but especially in the service trades, are hurt as well. Sometimes when a factory closes down, the other failures follow quickly, retail food stores where the factory workers shop or their bank; other times, the concilliary effects are slower, like in lingering death.

Closings send out ripples of destruction. The closing ripples usually begin as wage concessions, with the outer ring ultimately engulfing the business itself. Less wages means less taxes, leading to cutbacks in schools and community services and economic strangulation.

It is folly to believe that the expansion of the service sector will absorb the workers displaced in the industrial and manufacturing industries. The service sector is having the same difficulty as the industrial sector.

The Bureau of Labor Statistics took out twenty hours working for a 7-11 as if it were forty hours working for Bethlehem Steel, but they are not fooling the workers and they are short-changing the economy.

The legislation you are considering, H.R. 1122, the Economic Dislocation and Worker Adjustment Act, would remedy many of the failures of U.S. policy and programs of the past. Most importantly, it requires federal and state governments to establish the ability to respond quickly and effectively to workers faced with a closing or mass lay-off.

Early response is essential for a successful adjustment program for displaced workers. An essential for an early response is advance notice. The UFCW is gratified that H.R. 1122 includes such a provi-

sion. With advance notice, there can be consultation between the employers, unions, and the community to determine if there is an opportunity to keep the establishment open. When people cooperate and work together, alternatives and resources can be developed which may postpone or cancel a closing.

Advance notice provides an opportunity for a reasoned response. Surprise invites emotional reaction and embittered feelings. Displaced workers do not have hidden resources that will maintain their standards, standards of living after unemployment insurance runs out and while they are completing training programs, especially now, when new technology demands more complex skills, many programs frequently last for a year.

This legislation does not represent a new or unvested venture. It is not do-goodism run amuck. It is economic common sense. It would halt the economic drain of wasted skills and discarded workers. It is a recycling of America's human resources. Training programs have been a feature of the industrial scene for decades, as have job search, counseling and remedial education programs.

But what this bill does for the first time is establish a structure at the federal and state level to assure that adequately funded programs are delivered effectively and promptly to workers who can most benefit from it. Many of the ideas underlying H.R. 1122 were developed by Secretary Brock's task force on economic adjustment and worker dislocation.

These, in the judgment of the Labor Management and Government Representatives on the task force, add impressive weight to the obvious need of the workers and their communities. The UFCW urges prompt action on H.R. 1122.

Thank you, Mr. Chairman.

[The prepared statement of William H. Wynn follows:]

UFCW

STATEMENT OF WILLIAM H. WYNN

INTERNATIONAL PRESIDENT

UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION

BEFORE THE SUBCOMMITTEE ON LABOR-MANAGEMENT RELATIONS

COMMITTEE ON EDUCATION AND LABOR

U.S. HOUSE OF REPRESENTATIVES

MARCH 17, 1987

Thank you, Mr. Chairman and members of the Subcommittee. I am pleased to testify in support of legislation that will ease the effects of economic dislocation on workers and their communities. My name is William H. Wynn, and I am the International President of the United Food and Commercial Workers International Union (AFL-CIO).

The UFCW has some 1.3 million members organized in 700 local unions throughout the United States and Canada. The UFCW and its local unions have contracts with thousands of employers in the retail; food processing; packing; fur, leather and shoe manufacturing; and, other industries.

William H. Wynn
International
President

Jerry Menapace
International
Secretary-Treasurer

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The UFCW strongly supports legislation that will provide workers with advance notice and adjustment assistance when their employers close facilities or go out of business.

While the UFCW is usually thought of as a service trades union -- rather than as a union representing workers in America's traditional smokestack industries -- the impact of business closings and mass layoffs have been felt just as severely by UFCW members as other workers.

Many of our members work in meatpacking and in fur, leather and shoe manufacturing. These industries have been hard hit by the same factors that have affected steel and autos -- unrestrained imports and technological change.

Let's face it. We are not going to roll the clock back on technological change. And the questions raised by problems with imports are receiving prompt attention by the Congress on a different level. Let's not waste time asssessing blame while there are victims in need.

The current "merger mania" that is sweeping corporate America has produced a whole new set of victims. Thousands of UFCW members in the retail food industry have been victimized by corporate raiders who take over companies and then cannibalize them by selling job-producing assets in order to repay the banks. They don't give a second thought to the workers whose labors built that "asset" into something worth selling.

Workers and their communities are invariably the innocent victims of these takeovers. The only sure winners are the investment bankers.

When any business closes, the impact is felt by more than the workers directly affected. Workers in a host of other industries--but especially in the service trades--are hurt as well. Sometimes, when a factory closes down, the other failures follow quickly--the retail food store where the factory workers shopped or their bank. Other times, the ancillary effects are slower, like a lingering death.

Closings send out ripples of destruction. The close-in ripples usually begin as wage concessions, with the outer rings ultimately engulfing the business itself. Less wages means less taxes, leading to cutbacks in schools and community services and economic strangulation.

It is folly to believe that the expansion of the service sector will absorb the workers displaced from industrial and manufacturing industries. The service sector is having the same difficulties as the industrial sector.

The Bureau of Labor Statistics may count 20 hours working for a Seven-Eleven as if it were 40 hours working for Bethlehem Steel, but they aren't fooling the workers and they're short-changing the economy.

Those who believe that a job is a job is a job, either don't understand workers or they under-estimate them. Displaced workers are different from others who are unemployed, because of their long-standing attachment to their jobs.

That's why earlier training programs failed when they lumped displaced workers together with disadvantaged workers, teenage dropouts, and others. Under the Job Training Partnership Act (JTPA), Congress included -- almost as an afterthought -- Title III, which directed certain funds to meet the special needs of displaced workers. But in the years since JTPA was passed, the need grew larger, but the available funds grew smaller.

Underfunding wasn't the only problem. The program also suffered from inadequate implementation. State governments -- which had little or no experience in designing programs for displaced workers -- were charged with developing programs. As a result, in the first few years of the program, a number of states were unable to spend the funds allocated to them, despite the increasing number of displaced workers.

The legislation you are considering, H.R. 1122, the Economic Dislocation and Workers Adjustment Act, would remedy many of the failures of U.S. policy and programs of the past.

It authorizes $980 million, five times the amount appropriated for JTPA Title III in the current fiscal year.

It establishes a Dislocated Worker Unit in the U.S. Department of Labor to oversee federal and state programs assisting the reemployment of displaced workers.

It requires that states receiving federal funds to establish a Dislocated Worker Unit to concentrate exclusively on the victims of plant closings and mass layoffs.

Most importantly, it requires federal and state governments to establish the ability to respond quickly and effectively to workers faced with a closing or mass layoff. Early response is essential for a successful adjustment program for displaced workers.

And essential for an early response is advance notice. The UFCW is gratified that H.R. 1122 includes such a provision.

With advance notice there can be consultations between employers, unions, and the community to determine if there is an opportunity to keep the establishment open. When people cooperate and work together, alternatives and resources can be developed, which may postpone or cancel a closing.

Advance notice provides an opportunity for a reasoned response. Surprise invites emotional reactions and embittered feelings.

Once notice is given, the state Displaced Workers Unit can be dispatched to the scene to establish joint labor-management committees to develop worker adjustment assistance programs. A comprehensive array of services -- including job search counseling, training and retraining, and remedial education programs -- should be available on-site to displaced workers.

Income support provisions will allow workers adequate time to complete their training and retraining and job search programs. Previous legislation -- with the exception of Trade Adjustment Assistance -- failed to provide this critical income support.

Displaced workers don't have hidden resources that will maintain their standards of living after unemployment insurance runs out and while they are completing training programs. Especially now, when new technology demands more complex skills, training programs frequently last for a year.

Most workers have limited resources when their jobs end and unemployment insurance runs out. Many are single-parent heads of households who can't afford to accept certain training opportunities because they have to provide for their families. In addition, there's often no guarantee the worker will find a job once the training has been completed.

The tragedy is two-fold. A potentially productive skilled worker is lost to the labor force. Moreover, the standard of living of the worker's family starts to decline, often at time when the family's needs are expanding. This is costly to the nation, and tragic for workers and their families.

This legislation does not represent a new or untested venture. It is not do-goodism run amuck. It is economic common sense. It would halt the economic drain of wasted skills and discarded workers. It is a recycling of America's human resources. Training programs have been a feature of the industrial scene for decades, as have job search counseling and remedial education programs.

But what this bill does, for the first time, is to establish a structure at the federal and state levels to assure that adequately-funded programs are delivered effectively and promptly to the workers who can most benefit from them.

Many of the ideas underlying H.R. 1122 were developed by Secretary Brock's Task Force on Economic Adjustment and Worker Dislocation. One of the UFCW's top officers, Executive Vice President Jay H. Foreman, was a member of the Task Force.

The reasoned judgments of the labor, management and government representatives on the Task Force add impressive weight to the obvious needs of the workers and their communities. The UFCW urges prompt action on H.R. 1122.

Mr. MARTINEZ. Thank you, Mr. Wynn.

We are going to question this panel before we hear from the other three people.

Mr. Clay.

Mr. CLAY. Thank you, Mr. Chairman.

Mr. Samuel, I heard some quite revealing testimony from Mr. Johnston who was speaking for the National Association of Manufacturers. He stated at one point, and I quote, "The steel industry employment and income security program is so attractive that many older long-service employees at many locations have preferred to take these shutdown benefits rather than accept work rule changes or wage reductions to keep their plant's labor costs competitive to provide on-going operations."

You are familiar with a lot of people in this industry. Is that true and will you comment on that statement?

Mr. SAMUEL. Well, it is difficult for me to comment about the steel industry. I am not—although the Industrial Union Department includes among its affiliates the steelworkers, I am not myself from the steel industry. So, it is a little difficult for me to give direct testimony as to this.

I must say that, in general, perhaps President Bieber might speak on behalf of the auto workers in this connection, that it is pretty rare for a worker to give up a job for temporary or even long-term benefits.

Mr. BIEBER. Mr. Chairman, if I might just respond to that briefly.

I suppose it is fair to say that in some locations, older workers have opted to take early retirement, etc., and that is because in many situations they have been asked to do that in order to try to maintain jobs for younger workers.

But I can tell you this, if you go to Mr. Kildee's home town of Flint, Michigan, which is badly hit by the announcement of the General Motors workers, I assure you that you will not find people who have twenty-five and even thirty years of seniority who are rushing to the gate to try to get those benefits. That will become theirs if there is no other alternative.

Quite the opposite, they are fighting to retain jobs.

Mr. CLAY. I think what he is saying in my interpretation of it is that when they offer these lucrative wage and benefit cutbacks, in some instances of $8 and $9 an hour, that the employees will opt for the retirement rather than accept those kinds of cutbacks.

Do you find that the same in the auto industry?

Mr. BIEBER. No, sir. I do not, and let me point out, Mr. Chairman, in 1984, we embarked with General Motors and Ford on a very extensive training and retraining program and a program that provided for the right of people, in the case of General Motors for the first time to move across the country, to exercise their seniority for jobs, and I can tell you, sir, that we have people from all sections of the country who have moved thousands of miles away from all of their family roots to retain jobs.

We must also understand that when the reference is made to these lucrative inducements, I would hope that everyone on the committee understands that the lucrative inducements that you read a great deal about as it applies to the upper echelon of management workers do not apply to the worker down on the floor.

Now, I very strenuously will argue that our union has done a remarkable job, I think, in negotiating good pension benefits and so on, but they are not of the type nor were they ever intended that they were going to be an offset to good paying jobs.

You offer the auto worker or the steel worker a paying job, they will take it and they will move across the country to get it.

Mr. CLAY. Mr. Chairman, I have no further questions. I just want to state for the record, I have been told that Mr. Johnston was testifying, he was strictly talking about negotiating with his labor unions; he was strictly talking about plant closings. I am informed that there is no provision in there for massive lay-offs in those contracts that he spoke of.

Mr. MARTINEZ. Thank you, Mr. Clay.

Mr. Gunderson.

Mr. GUNDERSON. Thank you, Mr. Chairman.

Mr. Bieber, I could not help but think when you were quoting George Shultz that you might do him a favor if you do not quote him too often on this kind of stuff. He is in enough trouble with the conservatives right now, and——

Mr. BIEBER. Well, he may be in trouble with the conservatives, but I think the statement here spoke for the future of America and I like to quote people who are concerned about the future of America.

Mr. GUNDERSON. Fine. I am just kidding.

Mr. BIEBER. I was not.

Mr. GUNDERSON. What I was going to do is bring up a whole bunch of other things George Shultz has said and see if you agree with all of them, too, while we are in an agreeable mood here.

Mr. BIEBER. Now, sir, you have to remember I just got done serving for a year on George Shultz's committee on South Africa. So, we can talk about a lot of things.

Mr. GUNDERSON. Would any of you care to respond to this unforeseeable business circumstances? I do not think there is any dispute on this committee in regards to the need for advance notice. I think, you know, we all pretty much recognize the need for that.

The concern is the potential for litigation and confrontation and how do we arrive at some "reasonable working ground" in this area. As you heard me ask the first panel, the area of unforeseeable business circumstances seems to be undefined and broad and open to "serious litigation".

Would you care to respond?

Mr. BIEBER. Well, let me lead off just by making this point. I understand and I listened to the panel this morning and I do not want to suggest that they are stating anything other than their true beliefs, but I would point this out to everyone concerned, that I listened to the co-chairmen, I listened to Congressman Ford, who by his own statement I know he has worked many, many years on this piece of legislation, and I thought I heard everyone on this panel say that you are not trying to erect some impossible hurdle to get over, and you are willing to talk to people who have legitimate concerns to try to find solutions to them.

But I would like to point this out to the panel, as Congressman Ford probably knows, the situation today of small business part suppliers, etc., is much different than it was when he started four-

teen years ago, and in a sense, while competition is going to become much tougher, in many respects they have longer commitments on supply, etc., than they did back in those days because of the case of the auto industry, a number of suppliers for a given product has been reduced substantially.

We used to talk in terms of ten, fifteen, or twenty-five different concerns supplying a specific part. Today, if you have read the accounts of General Motors, Ford and Chrysler, they are reducing that number. They are entering into long-term commitments now on purchase. It used to be that you bid primarily on a model. Today, they are entering into four and five year commitments because this reduces the cost of that part. The producer can plan on that.

So, these situations that just drop out of the blue sky all of a sudden are very, very minimal, and I think they are blown out of proportion.

Let me give you another illustration——

Mr. GUNDERSON. Quickly, because I do have another question.

Mr. BIEBER. Okay. Let me give you one—the alternative to that. It is interesting to note that when General Motors was forced with declining stock prices on Wall Street, they could overnight make announcement relative to eleven plants and I would point out to you some of those are two and a half years down the road.

Mr. GUNDERSON. I want to go on because the Chairman is watching time here very close.

The second question deals with the issue of consultation and while Mr. Ford is trying to allay my concerns that it is not exhaustive consultation, let me read to you what the committee print for H.R. 1616 said last session. It made it clear that consultation must be "exhaustive, the employer must have a 'good faith' willingness to explore alternatives and not simply be going through the motions with 'intransigent and unyielding attitudes that makes consultation a meaningless exercise', compliance with this requirement presupposes a desire to reach an ultimate agreement".

I guess what I am saying is that it seems to me the committee print, which is used in courts and in litigation, makes it very clear we are not talking about just consultation, we are opening this up to very adamant and I would suggest litigation is where we are going to end up.

Mr. BIEBER. Well, sir, in all due respect, you are a member of the committee and the committee has to speak for itself. I do not interpret that language to mean that at all. I would commend the committee because I think anything less than that language would render the bill somewhat useless.

I think we have to be committed to good faith attempt to set down in consultation and try, and I underscore this, not to always look at the most bleak situation. I would hope that the intent of this bill is to try to retain as much and as many plants and industries that we can, and I would like to point out that one of the Chairmen earlier today pointed out his own experience.

I would ask you again to look at my testimony, page 11 and 12, which deals with the General Motors plant in the State of Alabama, and a Chrysler plant in Detroit, Michigan. In the plant in Alabama, they absolutely made a decision to close that plant. They

told us it was going to be closed. It was with the help of local governmental officials, Governor George Wallace, the State University of Alabama, that we were able to convince them to sit down and take a good hard look at saving this plant.

The University came in and helped conduct a study. One of the first things that they found that involved thousands of dollars was that someone decided that they would leave the air conditioning and the lights on in the plant all night long, even though there was not a second shift. This was thousands of dollars.

Within nine months time, we had reached the targeted $300 and some million, and as a result of that, General Motors put an additional $14 million investment there. I went through that plant within the last year.

In the case of the Chrysler plant, here was a situation where it was going to be closed. With consultation with the workers in the plant, showed them how they could use their own work force to revise this plant. Was it worth it? Absolutely, because shortly thereafter Chrysler found themselves in a situation where they did not have enough plant space.

Let me give you two opposite examples. I remember a case when I was a regional director in Western Michigan, in Saginaw, Michigan, where a plant was closed down. People came, tapped the workers on the shoulder, asked them to step back, took the cutters and cut off the electrical input to the machines and bolted them and moved them out, and when they asked where are they going, they said they are going somewhere else. They closed down the plant.

Mount Clemens, Michigan. The plant that built automatic seat adjustments for cars, was told—the workers were told they were going to have a two week vacation period. I believe it was in the month of August. One of the committee people lived about a half a mile from the plant, and the second day in the evening noticed what he thought was a fire in the plant, and when he went up to the plant and peeked in the windows, they had put up canvas around the windows, had brought in the outside people, was dismantling the plant and did dismantle the plant and move it out.

Now, these are not somebody's fantasies. These are real situations, and I can go on and on and on and give you examples on both sides, and I think what we are trying to accomplish here in this bill is an effort to retain good jobs, retain industry, help the communities in which they are located and the workers there, and you cannot do that if you do not have advance consultation.

I do sit on the board of directors as well, and I do understand where those decisions are made, and I know sometimes all the facts are not there when the decisions are made. That is what I think is the importance of this bill, to try to save the industrial base and good jobs of America. This is one step in doing that.

Mr. MARTINEZ. The time of the gentleman has expired.

Mr. Ford.

Mr. FORD. Thank you very much.

Appropo of the questions of the gentleman from Wisconsin, if you look at the Brook report, as we started calling it some months ago, on page 22, where they discuss unforeseen events, I find something worth noting.

Almost from the beginning of the discussions of OTA quoting GAO as a part of the Brock task force—I have to get them all correct. I read—

> It is worth noting that dire financial emergency seems to be an infrequent factor in plant closings and large lay-offs. GAO's survey of mass lay-offs in establishments with over one hundred employees found that only seven percent of the firms said they had undergone bankruptcy or financial reorganization before the lay-off. By contract, seventy percent of the firms cited reduced product demand and increased competition as factors in influencing their decision to lay off workers or close a plant.

More than half mention high labor costs. Yet, from all the years of discussion, today was the first time we have had a panel here that did not spend most of the time saying the real problem is the poor fellow is struggling day by day to keep his business going and he does not know when it is going to go under and how do you deal with that. That is why the GAO study addressed itself to that question.

How important is that consideration? They found that only seven percent of the cases was a business failure, if you please, the reason for the closing, and I suppose I would even be willing to make an exception for a business failure, forgive everything if you go out of business, if that would ease their mind because it would still get us to the ninety-three percent of the cases where it is a deliberate decision generally with some economic interest that somebody some place can see that it is happening.

I think of the difference, for example, of my neighboring district and mine. B.A.S.F., a German company, bought the principal chemical company in what we refer to as down the river trading. The whole area grew up around that chemical company over several generations and preceded me during my generation.

B.A.S.F. bought the plant and a group of people on a board of directors over in Germany sat down and started dispersing it out around the country. Ultimately, it was down to 600 people. They moved those 600 people to Louisiana, to another operation they had purchased down there, pulled those buildings down so that they could no longer be taxed by the local people, and said good-bye.

Now, nobody connected in any way with that community made that decision. It was made in Germany. Presumably by predominantly German citizens who are looking at a computer sheet that told them if they moved that operation to Louisiana for some period of time they would make a better profit. No consideration at all for the workers or the community or the state of Michigan or anybody else.

Just up the street, we did have the threat of a business failure. McCloud Steel was put into Chapter 11. That sent shock waves throughout the whole area, the last major steel company operating there. What happened was that on an ad hoc basis, Congressman Dingell and I together with Senator Riegel and others sat down with the people representing some thirty-four banks that were holding them tight, the local communities. There were some tax abatements worked out, the steelworkers, I think, broke their national contract for one of the very first times to provide for a different wage scale for the plant. That was an inducement. There was a whole lot of things were packaged together because everybody

wanted to avoid the closing, including the then owners. They could not do it on their own, and they were overly extended. The end result was that they found an outside buyer who, with these new working conditions and new union contract, new tax provisions, was willing to take a chance and there are 2800 people working in that plant now. It is in trouble again because there is no sheet steel which is the primary product in Japanese cars that are now replacing the cars made by American auto workers here. American auto companies making them overseas do not buy American steel and ship it over there to make their cars.

Here is two examples. One of a longstanding business that left and nobody knew who to talk to. Who do we ask about this? How do we find out if there is an alternative? The Mayor at one time announced he was going to go to Germany to try to find out who he was supposed to talk to.

The other case, we had some Midwestern people who had a concern, who sat down with everybody, we did not have this law, we did not have any notice requirement because Chapter 11 gave everybody notice that the thing was going down the tubes.

They pulled themselves together and got it done. Now, I can give all these representatives of business lots of examples of where business men of good will have worked with unions, have work force and others and obviated the necessity for a closing, but for every one of those is the unimpeachable statistical case that the Brock Commission developed through its resources, showing that the overwhelming majority of employers do not engage themselves in that kind of an exchange, and that is the whole reason why we think that if we do not say that there has to be consultation, there is not likely to be consultation.

The gentleman is correct in describing how we expected the bill to work in the last Congress. We did use the language that he quoted from in describing how we thought consultation would work. We were giving the employers the benefit of the doubt by assuming that if there was a legal requirement that they consult that they would guard that as something other than just a little technicality, that they would seriously be law-abiding citizens who would go meet with various representatives included in the bill in both the communities and the workers in good faith, and that they would not just sit and recite poetry to each other; they would actually talk about the problem and try to understand whether or not there were alternatives.

We said so. Now, if we are wrong in assuming that there will be good faith voluntary compliance, one of the interesting things I see even from the panel today, which is milder than panels speaking for those interests in the past, is that they continually talk about what happens if you have to force these people to do something.

We would like to believe, just as most people pay their income tax without having a revenuer come around and grab them by the collar, most business men will follow the law without having a policeman come and tell him or a court that they have to follow it.

If I am wrong, then I would guess I should adjust my Pollyanna optimism a little bit because here sit this morning experts saying literally you are going to have nothing but litigation because nobody is really going to follow this act unless you go to court and

make them. That disappoints me, and I do not think that these gentlemen with their experience in the unions have seen that that really happens.

You do not have to litigate every contractual discussion you have. If you did, I do not think any of the unions could stay in business, much less the employers, and it is very rare when contractual disagreements end up in court, not frequently.

Mr. MARTINEZ. The time of the gentleman has expired.

Mr. Grandy.

Mr. GRANDY. Thank you, Mr. Chairman.

Mr. Wynn, I am sure you are aware of the labor management altercation that is currently going on in Dakota City, Nebraska.

Mr. WYNN. I understand there is a dispute.

Mr. GRANDY. Generally, how does this proposed legislation affect your ultimate relationship with the meat packing industry, which is impacted itself by a variety of sources? How do you see what we are talking about here today helping your membership and the industry reach a more harmonious partnership?

Mr. WYNN. Well, in the meat packing industry we represent about 100,000 workers. I would assume that in about ninety percent of our contracts, if not more, we have a six month notification. It has been there for many years. It has been there before. You have a congressman (committee member Rep. Hayes) who came out of that industry who could tell you, but it has been there for a long time.

It has not proved burdensome to employers. It has on occasion been helpful in keeping some plants open. We do not have—we have notification, but we do not necessarily have consultation. In some cases, there has been situations where employers have given us notice to do a variety of things to scare our members, to scare the community, and to try to roll back wages, and then after the six months period went by and there was nothing done, they stayed open.

There were other situations where the plants did, in fact, close and primarily that came about because of the fact that basically the meat packing industry is, as you know very well, because you are from that part of the country, is contracting out work and this impacts substantially on our members.

But the six month notification has been absolutely no burden to our packing house workers. Now, if you wanted to take the substantial majority of our membership that works in retail food stores, they usually are advised on Saturday night that the store will close on Sunday. Fortunately not all our employers are that bad. Some of our employers have seen fit to resist closing notices on the basis that our members who probably have an average employment with most of our companies of fourteen to twenty years of employment, that if they had to give them too much advance notice, they would steal the merchandise, which I think is a very disrespectful position on the part of management.

Mr. GRANDY. Are you not saying as a rule in your particular segment of the food industry that it is the smokestack employer as opposed to the service employer who is more inclined to participate with consultation and notification?

Mr. WYNN. I just said we happen to have it. It was something that was in the packing house contracts for many, many years, long before my time.

We have attempted to secure it in the retail food industry, and have been unsuccessful. If you have been reading—the Washington Post, we have a situation on the Eastern Shore that affects my members because of a situation that happened with a company that got caught in what they refer to as a friendly take-over where they created about $4.6 million worth of debt which our members are now going to have to pay for by the loss of about thirty or forty thousand jobs, where they threatened to close the operation over there unless our members voted a $5 an hour wage decrease; because of no action on the part of our members. I mean, nothing that they did created this $4 million worth of debt. Many of those Eastern Shore stores happen to be very profitable stores. Granted, two or three of them are brand-new, and they want our members to take a $5 an hour wage decrease or they would shut the stores. Well, our members voted not to take the wage decrease and they shut eight of the stores.

Mr. GRANDY. In the time remaining then, I just want to get into this because in your testimony, Mr. Bieber, you referred to notice, and mandatory consultation. Is it possible to have one without the other?

Mr. BIEBER. Are you speaking to me?

Mr. GRANDY. Yes, I am.

Mr. BIEBER. No, I do not think there is.

Mr. GRANDY. They really are one. You do not think it is possible for a company to sit down with its employees and consult them about the fact that it might be in jeopardy if certain measures are not taken.

Mr. BIEBER. No, I—obviously, if that happens, if that happens in many instances, I might just say that I am somewhat amused, I guess, or somewhat aghast to hear a company now say that their big fear is that they have to disclose certain things that if they give you advance notice.

I do not find that reluctance on the part of companies when they come to us and it has been repeatedly in recent years asking us to take wage reductions and fringe benefit reductions. They are very willing to put all of the facts on the table when they make that approach to you, and, so, I find it inconsistent or contradictory to argue now that the advance notice of a plant closing would, in fact, somehow give them all of these problems with their financial people and so on.

I would point to one other thing, and that is the Chrysler situation. Certainly, I think, all of the inter-secrets of Chrysler was bared at the time that we got to the bottom of the barrel, so to speak, and that did not prove to be the death-knell for Chrysler. Quite the contrary. We have come back and it is a pretty profitable company, one who just saw fit to buy American Motors.

So, the only point I am making is that it seems to me there is two different distinct arguments made here depending on what one is trying to justify.

Mr. MARTINEZ. The time of the gentleman has expired.

Mr. GRANDY. Thank you, Mr. Chairman.

Mr. MARTINEZ. Mr. Kildee.

Mr. KILDEE. Thank you, Mr. Chairman.

Owen, I was happy to hear you quote from the Catholic Bishops Pastoral Letter. When I was in the seminary in Detroit, Michigan, my fellow classmates were writing a dissertation on the hypostatic union and the beatific vision and I wrote mine on the moral foundations of the CIO. I got an A plus.

Mr. BIEBER. That is why you are a congressman today.

Mr. KILDEE. One of the reasons. I got an A plus on that paper also, by the way. More than some of my classmates got.

But some of my classmates are bishops now and they are writing these pastoral letters. So, I feel I had some influence on that.

Mr. BIEBER. Did a good job.

Mr. KILDEE. My question is related to this. You are very aware of the problems in my district. You were there on Friday, I believe, or whatever. We had lunch together at the Rotary.

We were able to work together with labor, management and some of the various educational agencies to do some retraining. Now, I recognize that training or retraining do not help much if there are no jobs for the retrained workers, but at the same time, the President has asked us in our education budget this year to zero fund vocational education.

Does that make sense when we are trying to compete in this world of very severe competition now with the rest of the industrialized world? Does it make sense for us to be cutting back to real zero funding on vocational education?

Mr. BIEBER. No, sir. It does not. In addition to that, it puts added burden on the collective bargaining table.

In 1984, we negotiated with both General Motors and Ford fifteen cents an hour, tough money to come by, and that and today, to put in training and retraining programs. As you know, Congressman, in your home city of Flint, we have an extensive training and retraining program in that city. It accomplishes two things. Number one, we have retrained people who then go back to the system and are re-employed in the auto industry to do the job at the state of the art plants that are operated today that paid for the extensive training.

At the same time, we have retrained in plants and in other areas people who are not going to have a future in the auto industry, in a wide variety of jobs. We have taken a look at trying to retrain them for the better paying jobs to be sure, and I think that it has had a reasonable success, but I find that total contradiction at a time, and this has been going on for some years now, as you well know, the retraining funds, the Administration is continuously reducing them at a time when we have had the greatest dislocation of workers in America's history.

And, so, the net result is that if you are a responsible union then you have to try to pick up that slack for your members and it is difficult today to hack fifteen cents out of an agreement that you must get ratified and in case anybody forgot, the General Motors agreement the last time did not have that big of a cushion, and we could have used that money much better to try to do some other things.

Mr. KILDEE. The President speaks of competitiveness, but for us to cut back on retraining dollars, to my mind, is like unilateral disarmament, when we are trying to compete particularly with Japan in Flint. We are competing directly with Japan, and Brock, Secretary Brock, talks about retraining and Secretary Bennett comes over and says we should cut to zero funding. This is the same cabinet, the same President. It is very puzzling to me that they do not have at least a phone line between the Department of Labor and the Department of Education.

Mr. BIEBER. Total contradiction.

Mr. KILDEE. Thank you very much, Owen.

Mr. MARTINEZ. Thank you, Mr. Kildee.

Mr. Hayes.

Mr. HAYES. Just let me commend the gentlemen for what has been excellent testimony, which I intend to go through most of it in its entirety, although I am not entirely unfamiliar with it. I must acknowledge that Mr. Wynn here is the International President of the Union in which I am still a member of. I am retired. I am a paid up member in the union.

Mr. MARTINEZ. We will not ask you about that.

Mr. HAYES. We have certain privileges. I am not voting, though.

I am really concerned about what I consider to be a catastrophic situation. You heard the testimony of the corporate interests here who pressed much about the notification provision of the bill itself. One admission, which was very clear, I do not care what you do to it, they do not want it. That is the only way to put it.

I am concerned, too, and you are right, most of our big employers' contractual obligations require them to give six months notice on close down. But that does not hold true in many of the smaller independents, and the other thing, even some of the big ones have been able to circumvent notification by gradually closing a plant down, just laying off people in numbers and never call them back.

Once you exhaust your seniority, you can be laid off for a year and still be on the call back list, but once you pass that year, you just are done and they close that part of the plant down then. Now, this particular bill does not cover that kind of situation, to my understanding.

But there seems to be an increasing number of people affected in this way, and you have got another group where the corporate interests just changes its name, it closes up, changes name and some of those same board of directors members wind up with a new company and hire the people completely new that they want.

These are the kind of things that people are really concerned about, and I think, if I can be a little political, the party which I am a part of is concerned about its own political base, they will pass—we will pass this current legislation this time. We control both Houses, and there is no reason why if we are looking forward to 1988 to continue our momentum that this kind of legislation will not pass.

But I must say that this is not a cure-all to the ailment which concerns the work force. There are not enough jobs to go around. The training is not the complete answer. We have to, it seems to me, as legislators begin to come up with ways and means of resurrecting the means of providing jobs for the people who are going to

be a part of the permanently unemployed, many of whom are blacks and minorities, and I, for example, just went to National Airport to go to Dulles, so I drive out there. When I am coming back into National, I leave my car out at National. Here was a sign I had not seen in many years on the window where you buy your ticket to ride the bus. Help wanted. So, I said to the all black force working in there, I said, I am going to have to ask why this sign is up here, I said, because I know you people receive very low wages, do you not, you said it, that is right.

These are the kind of jobs that are available now, but I think if we want to maintain this high living standard we have, we have to really do something about beginning to provide the kind of jobs. You are looking at a person now, our youngsters have nowhere to go, who was in the CC Camp. That was a savior for me during the time of the Roosevelt era. My daddy was on WPA. We got the labor movement. I think it has got to be a force in trying to get us to ask our legislation to work hard for people because this is not an answer to the problem.

Thank you, Mr. Chairman.

Mr. MARTINEZ. Thank you, Mr. Hayes.

At this time, I am going to take the prerogative of the Chair and rearrange the remaining witnesses. We have three people that are going to testify on a particular instance. Let me ask, do the three people have written testimony?

Mr. SAMUEL. I do not.

Mr. MARTINEZ. Just the one. Can you decide between you which of you will provide testimony today on this, and then I will allow the record to remain open for the others to provide their experiences for the record.

All right. Very good. Then, you will come forward and I assume you are Fricano.

Mr. BIEBER. Tom Fricano is the regional director.

Mr. MARTINEZ. Why don't you come forward to the dais. Thank you very much for being with us and providing us with your testimony.

Mr. BIEBER. We wish to thank the Chairman.

Mr. MARTINEZ. And I would like to call at this time the Honorable Angelo Martinelli, the Mayor of Yonkers, New York, Chairman of the Subcommittee on Employment of the U.S., U.S. Conference of Mayors, and Mr. Isiah Turner, Commissioner, Washington State Employment Security Department, and President-Elect, Interstate Conference of Employment Security Agencies, Inc.

Okay. I think they are looking for Mr. Isiah Turner. So, while we are waiting for him, Mr. Mayor, would you commence?

STATEMENT OF HON. ANGELO R. MARTINELLI, MAYOR, YONKERS, NY, CHAIRMAN, SUBCOMMITTEE ON EMPLOYMENT OF THE UNITED STATES, U.S. CONFERENCE OF MAYORS

Mr. MARTINELLI. Thank you very much, Mr. Chairman.

I am Angelo Martinelli, Mayor of Yonkers, New York, and I appear before you this morning on behalf of the U.S. Conference of Mayors, where I chair the Subcommittee on Employment.

I am not going to read my statement, and I ask that it be put in the record, but——

Mr. MARTINEZ. So ordered.

Mr. MARTINELLI [continuing]. I have to tell you that it is very interesting, the comments I heard this morning.

At the outset, I would like to tell you that I am also a Republican Mayor. Although my colleagues are not here, although I did speak on plant closing legislation a few years ago, and I was very sorry to see that it did not go through at that time, because I think you have to go through the experience and Yonkers, New York, has gone through the experience.

We have some very interesting things to say. First of all, I would like to say what I call a tale of two companies. One, we had a company that is a sugar refinery, and representatives of that company, back in 1976, came to my office and told me that they were going to have to close the plant down. There was a big change in the sugar business. The market for liquid sugar was diminishing and they really had to get out and close this plant. They gave us six months. They did not lay off an employee. They talked to us, gave us the consultation you are talking about, and within that six months, we were able to produce somebody else to buy the company and to keep the company going. There was not one lay-off. Today, it is one of the strongest sugar companies in the industry and it is doing great business.

They consulted, gave us consultation and gave us notice. The second company is Otis Elevator Company. Otis Elevator Company is really a classic, if you want to know something, because we in the City of Yonkers made an investment of something like $16 million in federal, state, and local money to an Otis Elevator Company that came to us, and said we have to improve our operation here, and we were willing to close streets, to buy property, to tear down that property, to the cost of $16 million, so that they would stay in our community, and then we talk about take-overs.

United Technologies took over Otis Elevator Company and from day one in 1976, when they had 1,500 employees at the company, at the time we were glad that United Technologies, was taking over, we said this is a defense contractor, we are going to do better. They are going to have 2,000 employees. That is what Otis told us. In a few years, after the new plant was built on the site. Well, when United Technologies took over, we felt that they had a planned scenario to close that plant.

I have to tell you that every time we met with them, they said we are going to keep the plant open, and they laid off 200 workers. In 1982, just before Christmas, they announced the closing of that plant when they had told us six months before that time that they had no intention of closing the plant.

Let me tell you, this legislation would have defeated their purposes because they would have had to notify us or compenstate the workers were laying off—they laid off down to 300 workers. That is what we had at the final end of it. I have to tell you that was absolutely wrong. I think this kind of legislation would have served a great purpose.

I also say to you that consultation is absolutely necessary. Truth in consultation is most important. So, we have had a scenario and I

speak highly as a Republican and a conservative mayor, whether we talk about big business, I think it is right for us, and I think it is the right time, and I congratulate you for moving this process.

I would hope that my Republican colleagues could have heard what I had to say that because it is a necessity that we get this kind of legislation. You know, states have been trying to do it, but I think that in a way I would rather see you do that rather than the states because there are many companies that have plants in different states, and you would not want one state competing against another state.

So, I am saying to you I congratulate you and I hope that we in the U.S. Conference of Mayors, and I know I have taken the lead, have been working with you. We think there are a couple of things that ought to be modified. We want to work with you. We think that the chief elected officials in communities rather than the chief administrative officer because as the chief elected official that is the responsibility on JTPA and the private industry council. You do not want to get somebody else that could possibly be in a community involved.

But we think that the legislation is good and we congratulate you and we would like to see it passed, and I know that we will do as much as we can in the U.S. Conference of Mayors to see that it is passed, but we have had a scenario. I think you have to look at the communities that have had that scenario happen to them and then they are going to be supportive of this kind of legislation.

Thank you very much.

[The prepared statement of Angelo Martinelli follows:]

UNITED STATES CONFERENCE OF MAYORS

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STATEMENT BY

THE HONORABLE ANGELO MARTINELLI
MAYOR OF YONKERS

on behalf of the

UNITED STATES CONFERENCE OF MAYORS

before the

SUBCOMMITTEE ON LABOR - MANAGEMENT RELATIONS
COMMITTEE ON EDUCATION AND LABOR
UNITED STATES HOUSE OF REPRESENTATIVES

MARCH 17, 1987

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, I AM ANGELO MARTINELLI, MAYOR OF YONKERS. I APPEAR BEFORE YOU THIS MORNING ON BEHALF OF THE UNITED STATES CONFERENCE OF MAYORS, WHERE I CHAIR THE SUBCOMMITTEE ON EMPLOYMENT. WE CONGRATULATE YOU ON MOVING SO QUICKLY TO INTRODUCE LEGISLATION TO ADDRESS THE SERIOUS PROBLEM OF DISLOCATED WORKERS IN THIS COUNTRY. WE ARE READY TO WORK WITH YOU TO MAKE SURE THAT SUCH LEGISLATION IS ENACTED INTO LAW.

ACCORDING TO THE BUREAU OF LABOR STATISTICS, 13.1 MILLION WORKERS AGED 20 AND OLDER LOST THEIR JOBS BETWEEN JANUARY OF 1981 AND JANUARY OF 1986. OF THOSE EMPLOYED THREE YEARS OR MORE, 55 PERCENT LOST THEIR JOBS BECAUSE OF PLANT CLOSINGS OR BUSINESS FAILURES, ONE-THIRD DUE TO "SLACK WORK," AND THE REMAINDER BECAUSE THEIR POSITION OR SHIFT WAS ABOLISHED. ABOUT ONE-HALF OF THESE WORKERS LOST MANUFACTURING JOBS. ONE-THIRD OF THESE WORKERS HAVE NOT BEEN REEMPLOYED. OF THOSE WHO HAVE FOUND NEW JOBS, 30 PERCENT WERE EMPLOYED AT JOBS WHICH ENTAILED PAY CUTS OF 20 PERCENT OR MORE.*

THESE STATISTICS DRAMATIZE THE PROBLEMS THAT TOO MANY HARD WORKING AMERICANS FACE. LONG TERM UNEMPLOYMENT HAS A DEVASTATING EFFECT ON A COMMUNITY AND ON THE INDIVIDUALS INVOLVED. THERE ARE PERSONAL AND FINANCIAL HARDSHIPS. THERE ARE COSTS TO THE LOCAL COMMUNITY. THE DISLOCATED WORKER AND HIS OR HER FAMILY ARE NO

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* "Reemployment Increases Among Displaced Workers," News, United States Department of Labor, Bureau of Labor Statistics, October 14, 1986.

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LONGER ABLE TO CONTRIBUTE TO THE LOCAL ECONOMY, AND IN FACT OFTEN MUST TAKE FROM IT TO RECEIVE THE HELP AND INCOME ASSISTANCE THEY NEED TO GET BY. AND THE NATION AS A WHOLE LOSES THE PRODUCTIVITY OF EXPERIENCED WORKERS. AT A TIME WHEN WE ARE SO CONCERNED WITH OUR COMPETITIVENESS IN THE WORLD ECONOMY, WE CAN HARDLY AFFORD TO WASTE SUCH A SIGNFICIANT AMOUNT OF HUMAN CAPITAL.

THE SECRETARY OF LABOR'S TASK FORCE ON ECONOMIC ADJUSTMENT AND WORKER DISLOCATION IN ITS DECEMBER 1986 REPORT TO SECRETARY WILLIAM E. BROCK SAID THAT THE PROBLEM OF WORKER DISLCATION "IS NOT ONE FOR INDUSTRY, OR LABOR, OR GOVERNMENT, ALONE. RATHER IT IS THE CONCERN OF EVERY CITIZEN. PROTECTING THE COUNTRY'S INVESTMENT IN HUMAN CAPITAL ENSURES A MORE PRODUCTIVE, MORE FULLY EMPLOYED SOCIETY FOR ALL....THE PROBLEM IS OF SUFFICIENT MAGNITUDE AND URGENCY THAT IT DEMANDS AN EFFECTIVE COORDINATED RESPONSE WITH SPECIAL PRIORITY BY BOTH THE PUBLIC AND PRIVATE SECTORS."

THE BILL THAT YOU HAVE PROPOSED, AND WHICH WE DISCUSS TODAY, HR.1122 WOULD ENACT INTO LAW MANY OF THE RECOMENDATIONS OF THE SECRETARY'S TASK FORCE. IT WOULD AUTHORIZE A NEW FEDERAL PROGRAM OF SERVICES TO DISLOCATED WORKERS, FUNDED AT $980 MILLION. AS PROPOSED, 70 PERCENT OF THE FUNDS WOULD BE AVAILABLE FOR JOB TRAINING, JOB SEARCH ASSISTANCE, CORRECTING BASIC EDUCATION DEFICIENCIES, VOCATIONAL AND ON-THE-JOB TRAINING AND INCOME SUPPORT. THESE ARE SERVICES BADLY NEEDED BY THIS POPULATION, SINCE ONLY ABOUT FIVE PERCENT OF DISLOCATED WORKERS ARE CURRENTLY SERVED THROUGH THE JOB TRAINING PARTNERSHIP ACT.

OUR ONLY CONCERN REGARDING THIS TITLE IS THAT IT DOES NOT CONTAIN ASSURANCES THAT MAYORS AND OTHER LOCAL OFFICIALS WILL BE

ABLE TO DETERMINE HOW THE FUNDS ARE TO BE SPENT IN THEIR COMMUNITIES OR THAT THESE FUNDS WILL BE USED IN TANDEM WITH OTHER EMPLOYMENT AND TRAINING DOLLARS. IN ADDITION, WHEN A RESPONSE TEAM IS CALLED IN BECAUSE OF A PLANT CLOSING OR A MAJOR LAYOFF, IT IS CRITICAL THAT THE MAYOR BE INVOLVED. WHILE WE NEED TO PROVIDE MORE ASSISTANCE TO DISLOCATED WORKERS, WE SHOULD MAKE SURE THAT THIS ASSISTANCE IS COORDINATED WITH EXISTING EFFORTS. I AM AWARE THAT YOUR COMMITTEE INTENDS TO CORRECT THESE SHORTCOMINGS IN THE BILL. THE CONFERENCE OF MAYORS IS PLEASED TO WORK WITH YOU TO DEVELOP SUITABLE LANGUAGE.

RESERVING 30 PERCENT OF THE FUNDS FOR DEMONSTRATION, EXEMPLARY AND DISCRETIONARY PROGRAMS IS AN EXCELLENT APPROACH. THIS TITLE SHOULD ENCOURAGE INNOVATIVE EFFORTS AND COULD TEST BETTER WAYS OF MOVING DISLOCATED WORKERS BACK INTO PRODUCTIVE EMPLOYMENT. THE PROVISION OF TRAINING LOANS AND THE USE OF UNEMPLOYMENT INSURANCE BENEFITS TO HELP START-UP BUSINESS VENTURES HAVE BEEN USED BY OTHER COUNTRIES AND CERTAINLY ARE WORTH TRYING HERE. THE PUBLIC WORKS EMPLOYMENT DEMONSTRATION PROGRAM WOULD HAVE THE DUAL BENEFIT OF PROVIDING INCOME AND CONTINUED EMPLOYMENT TO WORKERS AND IMPROVING THE DETERIORATING INFRASTRUCTURE AT THE SAME TIME. WE DO NOT UNDERSTAND, HOWEVER, WHY IT IS PROPOSED THAT THESE PUBLIC WORKS PROJECTS COULD BE VETOED BY THE BUSINESS AND LABOR REPRESENTATIVES ON A PRIVATE INDUSTRY COUNCIL, BUT NOT BY THE PUBLIC MEMBERS WHO REPRESENT LOCAL GOVERNMENT.

THERE APPEARS TO BE GENERAL AGREEMENT BY REPRESENTATIVES OF BUSINESS, LABOR AND LOCAL GOVERNMENT THAT ADVANCE NOTIFICATION TO EMPLOYEES AND LOCAL GOVERNMENTS OF PLANT CLOSINGS AND LARGE SCALE

PERMANENT LAYOFFS IS GOOD POLICY. THE SECRETARY'S TASK FORCE AGREED WITH THIS, AND OBVIOUSLY YOU DO AS WELL SINCE ADVANCE NOTIFICATION IS A KEY PROVISION OF HR.1122. DESPITE THE FACT THAT MOST PARTIES SEE ADVANCE NOTIFICATION AS A KEY COMPONENT OF A SUCESSFUL ADJUSTMENT EFFORT, THE MAJORITY OF WORKERS WHO HAVE LOST THEIR JOBS HAVE RECEIVED LITTLE NOTICE OR ASSISTANCE IN THE ADJUSTMENT PROCESS. A STUDY BY THE GENERAL ACCOUNTING OFFICE OF BUSINESS ESTABLISHMENT IN WHICH AT LEAST 100 EMPLOYEES LOST THEIR JOBS DURING 1983 AND 1984 SHOWED THAT ONLY 18 PERCENT OF THE BUSINESSES PROVIDED GENERAL NOTICE 30 TO 90 DAYS IN ADVANCE TO WHITE-COLLAR WORKERS AND ONLY 14 PERCENT PROVIDED SUCH NOTICE TO BLUE-COLLAR WORKERS. SPECIFIC NOTICE 30 TO 90 DAYS IN ADVANCE WAS PROVIDED BY 17 PERCENT OF THE ESTABLISHMENTS TO WHITE-COLLAR WORKERS, BY 13 PERCENT TO BLUE-COLLAR WORKERS. GENERAL NOTICE IS AN ADVANCED WARNING WITH NO DATE SPECIFIED. SPECIFIC NOTICE INFORMS WORKERS OF THEIR ACTUAL TERMINATION DATE.

WE RECOGNIZE THAT THERE IS MUCH DEBATE RIGHT NOW AS TO WHETHER NOTICE SHOULD BE VOLUNTARY OR MANDATORY. BECAUSE THE TRACK RECORD IS SO POOR, BECAUSE SO MANY WORKERS AND LOCAL COMMUNITIES HAVE RECEIVED LITTLE OR NO NOTICE OF AN IMPENDING PLANT CLOSING OR A MAJOR LAYOFF, THE CONFERENCE OF MAYORS STRONGLY AGREES THAT NOTIFICATION, AS PROVIDED FOR IN HR.1122, MUST BE MANDATORY. THAT WILL GIVE THE EMPLOYER, THE EMPLOYEES AND THE STATE AND LOCAL GOVERNMENTS TIME TO RESPOND TO THE IMPACT THAT THE CLOSING OR LAY OFF WILL HAVE ON THE COMMUNITY AND ON THE SPECIFIC WORKERS EFFECTED. THROUGH A CONSULTATION PROCESS ALL PARTIES WILL BE ABLE TO EXPLORE ALTERNATIVES TO THE PLANT CLOSING OR LAY OFF

AND TO DEVELOP EFFORTS TO ASSIST THE AFFECTED WORKERS.

INDEED, YONKERS ENCOUNTERED THE WORST POSSIBLE RAMIFICATIONS FROM A PLANT CLOSING WHEN, IN THE EARLY 1980'S, UNITED TECHNOLOGIES SHUT DOWN THE OTIS ELEVATOR MANUFACTURING PLANT -- A PLANT WHICH HAD BEEN A MAJOR PART OF THE COMMUNITY FOR ALMOST A CENTURY.

GENERATIONS OF FAMILIES BUILT THEIR LIVES AROUND THE OTIS PLANT. FATHERS, SONS AND GRANDSONS; MOTHERS, DAUGHTERS AND GRAND-DAUGHTERS COUNTED ON THE ELEVATOR PLANT FOR THEIR LIVELIHOOD.

WHEN CONCERN WAS RAISED IN THE EARLY 1970'S THAT THE PLANT MIGHT CLOSE, MILLIONS OF DOLLARS FROM FEDERAL, STATE AND CITY GOVERNMENTS WERE POURED INTO THE COMPLEX TO BUILD A NEW, MODERN, STATE-OF-THE-ART ELEVATOR MANUFACTURING COMPLEX.

STARTING IN THE LATE 1970'S WHEN OTIS WAS ACQUIRED BY UNITED TECHNOLOGIES, THE ORIGINAL WORK FORCE OF 1,800 BEGAN TO BE REDUCED THROUGH SMALL BUT STEADY REDUCTIONS. REPEATEDLY, UNITED TECHNOLOGIES DENIED IT WAS GOING TO ABANDON THE PLANT.

THEN, IN THE EARLY 1980'S WHEN THE WORK FORCE HAD DROPPED BELOW 1,000, UNITED TECHNOLOGIES CLOSED THE PLANT. THE COMBINATION OF THE SUDDEN CLOSING NOTICE, AND SEVERAL YEARS OF AGONIZING SMALL BUT STEADY LAY-OFFS, LEFT HUNDREDS OF FAMILIES ABRUPTLY AND SEVERELY DISRUPTED.

FOUR YEARS AFTER THE CLOSING, MANY OF THESE HIGHLY SKILLED WORKERS HAVE NOT REENTERED THE LABOR MARKET BECAUSE OF AGE, PSYCHOLOGICAL FACTORS, OR AN INABILITY TO ADJUST TO THE CHANGING LABOR MARKET.

HAD THERE BEEN SUFFICIENT ADVANCE NOTICE, AND HAD UNITED TECHNOLOGIES DEALT HONESTLY WITH CITY OFFICIALS AND THE OTIS WORKERS, THE TRAGEDY OF THIS PLANT'S CLOSING IN OUR CITY COULD HAVE BEEN AVERTED.

AGAIN, MR. CHAIRMAN, WE APPLAUD YOUR QUICK ACTION ON THIS LEGISLATION. WE ARE CONFIDENT THAT THE CONCERNS WE RAISED CAN BE ADDRESSED, AND WE LOOK FORWARD TO WORKING WITH YOU TO SEE THE BILL PASSED.

Mr. MARTINEZ. Thank you, Mayor Martinelli.
Mr. Turner.

STATEMENT OF ISIAH TURNER, COMMISSIONER, WASHINGTON STATE EMPLOYMENT SECURITY DEPARTMENT, PRESIDENT-ELECT, INTERSTATE CONFERENCE OF EMPLOYMENT SECURITY AGENCIES, INC.

Mr. TURNER. Mr. Chairman, members of the House Labor Committees, Subcommittee on Labor Management Relations and Employment Opportunities, I am Isiah Turner, Commissioner of the Washington State Employment Security Department, and President of the Interstate Conference of Employment Security Agencies.

In addition, in 1983, I had the opportunity to run our state's largest dislocated worker program with the Boeing Company and the unions associated with that company. So, I have first hand experience in dealing with the trauma of the dislocated worker and bringing to the table all the parties that are necessary to resolve such a dilemma for our dislocated community.

My department currently administers and operates dislocated worker programs under both the Job Training Partnership Act and the Trade Adjustment Act in the State of Washington. With all the publicity that we have been receiving about the Administration's proposed worker adjustment assistance program, I was delighted to review a summary of H.R. 1122, which I believe is a better approach to the same end, putting our dislocated workers back to work in jobs that maximize their skills and are as close as possible to their former wage.

The first point I would like to stress is that worker assistance programs are addressing the needs of the dislocated worker, and there is a critical need for continued federal support of these programs. In Washington State alone, we have provided worker adjustment assistance to some 13,765 unemployed workers since the enactment of JTPA in 1983.

Of those who have completed the program this past year, eighty-six percent of those people we put to work in new jobs at an average wage rate of $8.50 an hour. Since 1983, we have averaged about seventy-eight percent placement.

Since I am also responsible for the employment service in my state, let me emphasize that we do not duplicate efforts. Cuts in the employment service funding means dislocated workers would not have found new employment at these skill levels and at these wage rates without the specialized job search, retraining opportunities and relocation and support services afforded by these federal dislocated worker programs.

The worker adjustment services, such as outlined in your proposed legislation, compliment our employment service funding and provide us with the missing link needed by many of these persons who have worked for the same employer or in the same industry for twenty, thirty and some up to forty years.

Once they have gotten over the shock, it has been our experience that many of these people need adjustment services to redirect their lives. I also like the fact that H.R. 1122 is presented as an

amendment to the current title 3 of the Job Training Partnership Act. I believe this will ensure the continuation of the close linkages between the employment and training systems that have been established and nourished since the passage of the Act in 1983.

I have been in this business for going on twenty-three years, and I think it is about time that we just let something settle in for awhile. First, Title III of the Job Training Partnership Act was in its embryo stage, now it is in its infancy stages, and I think it would be a terrible waste of relationships that have been developed over these four years to make this program work to look at a whole new piece of legislation. So, I like the fact that this is an amendment.

I especially applaud the flexibility that the proposal provides to the Governor. I cannot stress enough the importance of this principle to the success of any worker adjustment program. We feel that our Governors must be able to ensure that the delivery of employment and training-retraining services to dislocated workers are closely coordinated with the other community development and economic development activities which must also come into play in the event of a plant closure and mass lay-offs.

Based on our experience in my state, I believe that the conditions contained in Section 305 are desirable and very much recommended. For example, we know that rapid response teams are effective because we have always had them since the inception of JTPA Title 3. Our team is comprised of three state agencies.

Just this past December, when one of our aluminum plants closed in a rural county of about 16,700 people, it dislocated about 600 workers. The first day I had my UI people in there rounding them up for their claim, but within that week, all three state agencies were in there: our trade and commerce department had found a potential buyer for the plant, our community development department was working with the local mayor to get some gap financing for the possible buyer, and my staff was already sitting down at the table with the local union people to establish retraining programs that would be commensurate with the needs of this new buyer as well as with the labor market in general in that area.

In addition, we currently form worker adjustment committees made up of representatives of labor, management, education and other agencies at the local level. These local steering committees help us to design the dislocated worker projects tailored to the needs of those particular workers for specific closures or large lay-offs or industry in decline projects, such as timber and ship-building industry projects in Washington State.

These committees have been very effective as well in helping us gain the trust and the confidence of the dislocated worker population.

Lastly, I would like to comment on our experiences with the positive effects of early notification on the success of dislocated worker programs. I think that it has to be there. I mean, it is inherent in this kind of activity when you are dealing with men and women in our society who have worked for years at a given situation and all of a sudden they are just out in the cold. There is a lot of tension, there is a lot of distrust, there is a lot of apprehension, loss of self-

esteem, loss of confidence. You are dealing with all those psychological and personal factors in the best of circumstances.

When you do have early notification, it helps mitigate the situation somewhat because it allows that affected individual the opportunity to adjust to the shock, allows that person the opportunity to work with agencies like mine to start planning for different career and alternatives, and it also allows for the state and the local public agencies and local governments to join in their collective efforts to plan to bring together their resources to help put these people back to work, or foremost, to try to retain the company, which is the best possible solution.

So, I think that what we have been talking about this morning in terms of early notification is one of the necessary elements for this program to work well. I work in this field every day and I work with many of these people. I am kind of a hands-on kind of administrator. I just see the frustration because we have had a lot of plant closures in our state and there will be many more.

I might add in my state, we have had great cooperation from the majority of the industries in terms of early notification, but I think that if we do not have some encouragement, we will see instances that I have heard about this morning in other parts of the country.

I appreciate the opportunity to testify and I am available to answer any questions.

[The prepared statement of Isiah Turner follows:]

TESTIMONY
BY
ISIAH TURNER, COMMISSIONER
WASHINGTON STATE EMPLOYMENT SECURITY DEPARTMENT, AND
PRESIDENT-ELECT, INTERSTATE CONFERENCE OF
EMPLOYMENT SECURITY ADMINISTRATORS
ON
H.R. 1122
THE ECONOMIC DISLOCATION AND WORKER ADJUSTMENT ASSISTANCE ACT
AT THE
JOINT HEARING OF SUBCOMMITTEES ON
LABOR MANAGEMENT RELATIONS
AND
EMPLOYMENT OPPORTUNITIES
Tuesday, March 17, 1987
Room 2261, Rayburn House Office Building

Chairs and Members of the House Labor Committee's Subcommittees on Labor Management Relations and Employment Opportunities:

I am Isiah Turner, Commissioner of the Washington State Employment Security Department, and President-Elect of the Interstate Conference of Employment Security Administrators. In addition, in 1983 I personally administered the dislocated worker project with the Boeing Company which gave me first hand experience with worker adjustment programs. My department currently administers and operates dislocated workers programs under both the Job Training Partnership Act and the Trade Adjustment Act in Washington State.

I am pleased to present this testimony regarding the need for continuation of federal support for worker adjustment programs and more specifically address the amendments to the Job Training Partnership Act as proposed in H.R. 1122.

I have been listening to and working closely with my counterparts around the nation to rethink the critical elements and principles which should guide any changes to our worker adjustment programs.

My compliments to the crafters of this legislation. It incorporates the best of what we have learned from operating dislocated worker programs under the Trade Adjustment Act and the Job Training Partnership Act, and from our neighbors in Canada. Specifically, Governors need to have the flexibility and authority to develop worker adjustment programs that address the unique needs of the workers, the businesses, and the communities in their states.

H.R. 1122 appears to address this need for flexibility in the following important ways:

- Authorizes the Governor to choose the delivery system most appropriate to the situation.
- Allows assistance to dislocated workers in non-mass layoff situations.
- Provides for state rather than federal performance standards and a complete mix of permissable services to dislocated workers, including income support and closure prevention actions.
- Permits up to 25 percent carryover and reimbursement of funds spent in excess of the formula from subsequent year's allocations.

Washington State currently operates its dislocated worker programs in a manner that closely resembles the service delivery requirements proposed in Section 305 of H.R. 1122. For example:

We use our JTPA State Job Training Coordinating Council as our tripartite advisory committee. We recommend that this Legislation allow states the flexibility to use their SJTCC in this manner.

We have an intra-agency Rapid Response Team which is activated upon the notification of a plant closure or mass layoff. We have found this approach to be very effective in orchestrating all of the state's resources to minimize the effects of dislocation on workers and their communities.

For example, in December, when one of our aluminum plants closed dislocating over 600 workers in a rural county with a population of only 16,700, our team convened within a week of the notice. As a result, our state economic development department found a possible new buyer of the plant; the community development department helped the local municipal government apply for gap financing for the potential buyer to purchase the plant, and our state dislocated worker unit is working with the labor organizations and the prospective owner to develop customized retraining programs for the dislocated work force.

We establish local worker adjustment committees made up of representatives labor, management, education, and other agencies. These local "steering committees" help us design dislocated worker projects tailored to the needs of workers from specific closures or large layoffs or in declining industry projects, such as for timber and shipbuilding. These committees have been very effective in helping us gain the trust and confidence of the dislocated workers.

Our experience with local worker adjustment committees is extremely positive and we support this part of H.R. 1122.

In Washington State, we encourage advance notice of dislocation in an atmosphere of cooperation between management, labor, and government. We find that this results in the most efficient and effective delivery of worker adjustment services.

Advance notification gives the dislocated worker the opportunity to adjust to the shock, then assess his or her future career alternatives and plan accordingly.

It also gives the state and the community the opportunity to rally their collective resources to retain the jobs, if possible, or to identify other potential employers and set up worker adjustment services.

Advance notification enhances the state's ability to plan and spend its worker adjustment funds on a timely basis.

The companies in our state which have voluntarily provided early notification have not experienced any backlash from their work force. Productivity has remained constant and at times, even exceeded expectations. In short, advance notification has resulted in a "WIN-WIN" for management and labor alike.

I appreciate the opportunity to provide this testimony as the dislocated workers of our nation need worker adjustment services to help them find new employment at a living wage.

Mr. MARTINEZ. Thank you, Mr. Turner.
Mr. Fricano.

STATEMENT OF THOMAS FRICANO, ASSISTANT REGIONAL DIRECTOR, REGION 9, UAW, ACCOMPANIED BY NORM HARPER, PRESIDENT, LOCAL 2100, UAW; AND DAVE STEINWALD, SHOP CHAIRMAN, LOCAL 2100, UAW

Mr. FRICANO. I will applaud the perseverance of all of you who have managed to stay through all of the testimony this morning.

I think the Trico experience is rather unique and deserves the few minutes I am going to take to read through the testimony and then save the rest of the time for questions.

I might add before I start that the geographic boundaries of Region 9 take in the total State of New Jersey, the eastern half of Pennsylvania, and everything in New York State west of the Hudson River. We have a large geography to cover.

In November 1985, the Trico Products Corporation, headquartered in Buffalo, New York, announced that it would close two of its three plants, all located in Buffalo. A patent for a wiper blade had been granted to the Trico founder, R. John O'Sheim, in 1917. When Trico began operations, the company employed more than 6,000 employees in their peak years.

Although the western New York area had been hard hit by numerous plant closings over the past few years, Trico was more of an institution in the city. The announcement shook the community. If Trico left, who could be expected to stay.

When Trico informed the U.A.W. that the first lay-offs would probably not occur until the summer of 1987, the union seized upon that advance notice to try to find ways either to reverse or lessen the impact of that decision. New York Governor Mario Cuomo offered the services and assistance of his office through Vince Teice, the Director of Economic Development for the state.

At a meeting held in New York City at the office of the Urban Development Corporation in January of 1986, Trico President Dick Wolf agreed with the U.A.W. suggestions that a study be undertaken to determine whether the company could be operated more efficiently and/or whether it was feasible to build a new plant in Buffalo rather than the Texas-Mexico border, where so many plants, as you all know, have run to.

The study was funded by New York State and Trico Products. Peter Legus of Cornell University was hired to conduct the study through his program for employment and work place systems. The eight month long study involved many members of the bargaining unit, numerous changes in production methods were recommended. In addition to the suggestion that the new plant be built in Buffalo.

Without going into the lengthy details about the changes in the new collective bargaining agreement, which was ratified in February 1987, just last month, important point to be made is that time was made available long in advance of the relocation of the work so that the union, the state, the community, and the company could all work together to search for alternatives for the Mexican move.

The result of these efforts, almost 900 good paying bargaining unit jobs will remain in Buffalo, in addition to more than 450 salary jobs. It was a victory for everyone involved with the process.

U.A.W. was fortunate in this instance because we were bargaining with an employer who had enough commitment to the community and the work force to seek solutions with the bargaining agent. Unfortunately, this type of voluntary cooperation is not always true, and that fact points to the need for mandatory notice and consultation in cases of plant closings or major relocations.

A significant proportion of American companies are poorly managed and seek low wage countries as a solution to their problems. Outside expertise can turn around hundreds of these situations if time and resources were available. This prevents much of the severe trauma occurring throughout America. Legislation of this type is long overdue, and the Trico experience is evidence of what can be done with adequate notice and consultation.

Mr. Chairman, that concludes my prepared remarks and accompanying me today, as mentioned earlier, are the Chairman of Local 2100 of the Trico Local, Dave Steinwald, and the President of the Local, Norman Harper, and we are all available for any questions you may have regarding the Trico experience.

[The prepared statement of Thomas M. Fricano follows:]

STATEMENT OF
THOMAS M. FRICANO,
ASSISTANT DIRECTOR, REGION 9
INTERNATIONAL UNION, UAW
BEFORE THE
SUBCOMMITTEE ON LABOR-MANAGEMENT RELATIONS
AND
SUBCOMMITTEE ON EMPLOYMENT OPPORTUNITIES
OF THE HOUSE COMMITTEE ON EDUCATION AND LABOR
ON
H.R. 1122 -- ECONOMIC DISLOCATION AND WORKER ADJUSTMENT ASSISTANCE ACT

MARCH 17, 1987

Mr. Chairman, my name is Thomas M. Fricano. I am the Assistant Director of Region 9 of the United Auto Workers. We appreciate the opportunity to be here with you this morning.

In November, 1985, the Trico Products Corporation, headquartered in Buffalo, N.Y., announced that it would close two of its three plants, all located in Buffalo. The patent for the wiper blade had been granted to the Trico founder, R. John Oshei, in 1917 when Trico began operations. The company employed more than 6,000 employees in their peak years.

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When Trico informed the UAW that the first layoffs would probably not occur until the summer of 1987, the union seized upon that advance notice to try to find ways either to reverse or lessen the impact of the decision.

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Without going into the lengthy details about the changes in the new collective bargaining agreement, which was ratified in February, 1987, the important point to be made is that time was made available long in advance of the relocation of the work so that the union, the state, the community and the company could all work together to search for alternatives to the Mexican move. As a result of these efforts, almost 900 good paying bargaining unit jobs will remain in Buffalo, in addition to more than 450 salaried jobs. It was a victory for everyone involved with the process.

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A significant proportion of American companies are poorly managed and seek low-wage countries as a solution to their problems. Outside expertise can turn around hundreds of these situations if time and resources were available. This would prevent much of the severe trauma occurring throughout America. Legislation of this type is long overdue, and the Trico experience is evidence of what can be done with adequate notice and consultation.

Mr. Chairman, that concludes my prepared remarks. Accompanying me today are two of the officers of the UAW Local which represents the Trico workers. They are David Steinwald, Shop Chairman of Local 2100, and Norman Harper, President of Local 2100. Thank you.

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Mr. MARTINEZ. Thank you, Mr. Fricano.

There was something said earlier by one of the witnesses in regards to notification to cities and elected officials when a company is moving out or closing up. I was in local government for twelve years and talked to people from other states and within the state of California at the annual National League of Cities Conferences and the state League of Cities Conferences. Almost no one got notification of a plant closing or shutdown, and very seldom, very, very seldom did we ever get notification of major lay-offs.

The case that I cited in my community of Ameron, I think, is one of those unusual situations where you find out. The company itself never thought to notify the local government. In most cases where company is moving into a city, they they want you to provide them with a CRA, provide them with streets, curbs and gutters so that they do not have to pay out of their own pocket for development. When they are building something new they come in to get special dispensations to the license fee you charge, etc., etc. They come in with their hat in hand many times asking for special favors they feel the city leaders will usually give in order to attract commerce and build a tax base.

When they decide to close because it did not work for them for whatever reason, because the competition got too tough, or they see an opportunity to move somewhere where they can get cheaper labor, they never think to notify anybody locally.

In fact, they do quite the opposite. They try to keep it as secret as they possibly can. This has nothing to do with fear of competition or fear of industry secrets being disclosed because we have seen the soul of Chrysler Corporation bared, and it did not cause them any great repercussions.

So, I really do not buy that argument, but from your experience as a mayor, how often does a major company, or, let us say a small business category company by the Small Business Administration's determination, of 200 employees or more, how often does that company come in and tell you or tell anyone in the city, the city planner, the public works director, or anybody else—that they are moving out of town and closing?

Mr. MARTINELLI. Very, very rarely. They never do. I mean, I told you about a company that did, and they did it by saying we are going to have to close the plant, we are not laying off anybody, but we are going to close in six months. That gave us an opportunity, then they said we are not going to stay here, we just feel that we have to sell this refinery. We brought somebody in to operate a refinery. They were looking for a refinery. We brought somebody else in and I have to tell you without concession they were able to come in, but in the—in most cases, ninety-nine and nine-tenths percent, they never notify us. We read about it in the newspaper that a lay-off is going on or they have decided to move out of town. They do not ever notify us.

The Otis situation, I want you to know, we have—Otis—Mr. Otis, he invented the first safety elevator in Yonkers, New York in the 1850s. We have had a long relationship with that company. They have come in to us many, many times with the threat—Otis, with the threat of saying we are going to close the plant unless we can

become more efficient. We have to close the street, you have to do this, you have to do that, and we have accommodated them.

I have to say to you that they were very honorable people. They lived up to their word. I do not have any doubts that they would have been honorable if they had kept the company. United Technologies is not an honorable company, to my way of thinking. I am saying—I have said it to Mr. Harry Gray. Mr. Gray never would meet with me. He never would consult, but they kept on saying to us, they fooled us, but I think that there was a plan.

I think that Mr. Gray had the plan that he was going to rape the company. Otis Elevator was a cash-rich company when they bought it. They took it over, and I am telling you that I think that the gains the unions had made over the years in that plant and the age of the worker all had some effect upon why they wanted to close it, but they were not going to disclose that to us.

In 1976, when the new plant opened, when United Technologies took over, they were not going to disclose it, saying we have no intention after all they are not building elevators, they are not building high-rises. You know, it is synonymous to think that in 1980, everything started—the high-rises were going to be built, everything was going to happen, and the elevator business was going to go. They decided to close the plant. They said that at that time, but, you know, the unfair part as they closed down, as they laid off a 150 workers at a time, those workers believed that they were going to open again, that they were going to come back again, that they were going to be there.

They were laid off and so many of them did not really look actively for jobs, and I am saying to you that was so unfair because they never brought back anybody that they laid off over a five year period, four or five year period. I am just saying to you that I wish there was some way that we could get back at a company like that. That is really why I am testifying.

We have in the federal courts right now, I hope we could ever win it, a case of what we call unfair enrichment because they got $16 million of our money, and they were enriched. The United Technologies bought Otis and were enriched by $16 million of our money, our taxpayers' money, and then they sold out and they moved on, and Otis is still in business, by the way, and I am just saying to you I think United Technologies—and I said this to Pratt and Whitney and I have gone to testify and speak at rallies and such in Connecticut and such that I think United Technologies is a vendor-oriented company rather than a people-oriented company.

They would rather buy from Japan or Canada or France and they do. I want you to know something, that during the time that United Technologies was closing this plant down, even though they said they were not going to close, we made every effort through Congress and everybody else, through the United States Government, the state government, to bring business into that company, and they said—every time they found a way of saying well, this is not the right business.

We brought business so that they would—maybe it was not the elevator business, but it was other kind of business that they could produce in that plant, and all I am saying to you is that I think that they perpetrated a fraud upon us and this legislation, I be-

lieve, would have stifled that fraud because they would have had to notify us, they would have had to notify us that the plant was going to close or otherwise they were going to be subject to other things.

I congratulate you. It has been a long time in coming and I said I testified before a committee a few years ago, hopefully, that we were going to get that. This is 1987 and I hope this is the year that we are going to get the legislation.

Mr. MARTINEZ. Thank you.

Mr. Clay.

Mr. CLAY. Thank you, Mr. Chairman.

I have no questions. I just want to commend the panel for excellent testimony, and I hope you win that case.

Mr. MARTINELLI. I hope so, too. $16 million.

Mr. CLAY. Incidentally, it was a very good recommendation you made on changing the language. We would appreciate any other recommendations you have that could help us.

Mr. MARTINEZ. Good. Mr. Ford.

Mr. FORD. Mr. Chairman, I want to echo your remarks. I was pleased with the testimony of all of you. I was particularly pleased to hear your description of the Washington State operation, Isiah, because Mr. Meeks, who sat on this committee for many years, used to rail and twist arms and preach and so on for years out there to get them to recognize that Washington State could not depend on all the foreign workers going in to the eastern part of the state working on the farms. He got the vocational education program changed, he did a lot of other things because he represented Everett where he had the problem right in his lap.

But, Mr. Martinelli, I am one of the people who pushed very hard for the idea from the very beginning that the notice has to go to more than just the employees, and I am glad that, as the Chairman says, you called this language to our attention. Maybe as the Chairman of the Subcommittee on Employment in Congress, we could have someone from there very able staff down here to sit down with our people and try to find language that would make you feel more comfortable than the chief administrative officer.

Now, here is the problem we have. In my own congressional district, I have twenty communities. Some of them have a strong mayoral form of government. Michigan is a home rule state, and you can make any kind of a local government within reason that you want to, and others have city managers.

I personally prefer the strong mayor, which most politicians do, but the idea of a city manager has had an appeal ever since post-World War II to a lot of folks, and when you get to the city manager situation, really the mayor only attends the council meetings and hardly anybody ever tells him what is going on in town. I do not know why they serve as mayors, some of them in those cities, as a matter of fact, and what we were searching for was a general term that would not say, well, if they do not have an active mayor or if the mayor is the barber and he comes down occasionally, you give him notice and that is enough.

We really are searching for language that would mean that the alarm is sounded with the right person who is motivated to get everything going. Now, we have not thought about—the other prob-

lem I have is that both of my communities are in the same county with the City of Detroit, and although they are independent cities——

Mr. CLAY. You have a strong mayor.

Mr. FORD. We have got a strong mayor. There is no question about it, and our mayors cooperate remarkably well in the whole area between the big city and suburbs in spite of all the tensions and they do work very hard.

In the State of Michigan, for example, where a number of years ago our state decided to give tax abatement for the location of plants, they woke up and discovered that our cities were rating each other. So, now, if you are going to locate a plant in city A that is now in city B, you have to get city B's permission before the state will give the tax abatement, and at least we have stopped the rating within the state because you know how cannibalistic it is. Every mayor tries to get what he or she can get for their town.

I guess what I am trying to say to you is you have got somebody to help us, we will take any kind of language that does not get too long that makes sure we are getting to the right person with the notice and bear in mind that while on the one hand I say the schools, because we have taxed schools separately in Michigan, the school people ought to know about it, and they did in the case of McClous Steel and they helped us, the county had to know about it because they were involved, and the state is taken care of here, but if we put a laundry list in, then that will be added to the list that you heard here this morning.

We have to notify so many people how do we know whether we have notified the right person and maybe some city is going to sue us. What they really would be acknowledging is what is true and you said it about Otis. In many areas, I have seen families where the great-grandfather made widgets for Henry Ford, and his son and his son after him, and they are going out of business now because General Motors and Ford are making the same parts that they made in Mexico for eighty cents an hour and originally when we started this legislation, it was our Region 1 of the U.A.W. with the parts suppliers. It was the Big Three that was going to be the focal point of the problem then, it was the suppliers, this offshore system started in serious by the big companies leaving our little people out.

And I think it has become very clear to us that some of the people who oppose this, as Mr. Sawyer from Ohio so readily exposed this morning, will say no even if they answer all the questions. If we change all the language to take care of all the complaints, as long as it says you have to get the advance notice. So, really, the issue comes down to that, does it not?

Mr. TURNER. That is correct.

Mr. FORD. You cannot do anything until you know and, Isiah, you are saying exactly what the Brock Commission said. The Brock Commission did agree, though, they did not agree to support the mandatory notice, but the earlier the notice comes, the more likely it is that the money to spend to deal with it will be effective.

Mr. TURNER. That is right.

Mr. FORD. You make more bang for your buck up front than you do after the fact. There are many studies that support what you

were saying on the basis of your own experience about the traumatic impact of the loss of jobs. One university study showed that when they studied work forces that had lost their jobs permanently by reason of sudden closing, that their suicide rate was twenty times the suicide rate of their peer group in other places, that hypertension, broken families, all the social consequences which we all pay for——

Mr. TURNER. That is right.

Mr. FORD [continuing]. And really at the base of this is saying to a company, you have a responsibility to a city and a state and a school district and the other people in that community as well as the people that work for you, and they do not even want to give notice to the people that work for them much less to a mayor who is going to want them to tell them why they are moving, and it would be pleasant, Mr. Mayor, if we had language so that they have to notify somebody because those people in Germany who took my chemical plant would at least have to send a letter. I doubt if they ever talked to anyone. I do not know if they gave a damn whether they were concerned or not, and there was no reason why they should.

More and more of the businesses in my area is not controlled by the Chryslers and the Henry Fords and the others; the only major manufacturing industry I know of that is run by an engineer is Chrysler. I do not have confidence in anybody at the top management of Ford or General Motors even knows how to make a car. Most of them are MBA graduates from Michigan State, Columbia and Harvard and other schools who know how to read the computer but they could not put a nut on a bolt, and that is what has happened to American industry.

When we took over Penn Central a few years ago, I never got over the shock of discovering that on the entire board of directors of Penn Central when they went belly up and we took them over, the Government, there was not one person on their board that came out of the railroad. Not one guy who knew how to run a train. They were in a real estate company, and we heard this morning from a representative of what used to be the granddaddy of all steel companies. We got them a break from British steel here a few years ago, the Government got them some protection and what did they do, they went out and bought an oil company. They did not improve their production in this country. They did not make themselves more competitive.

So, now, when we go back to try to help steel again, some of the people who are still here say, wait a minute, you are not going to get this twice, we helped those fellows before and they did not spend the money on developing American businesses and American jobs, they spent it on buying another business that had nothing to do with steel.

Finally, I would note with some pride that years ago we had a Senator from Michigan named Phil Hart, and he started talking about this new phenomenon that was rising of businesses buying businesses totally unrelated to them, just as General Motors has been doing in diversifying. That is supposed to be great because they are diversified, and we got a new word in our language called a conglomerate, and Hart had the anti-trust committee over there

and they began to realize that the anti-trust laws did not reach to a situation where a large company like G.M. or United Technologies bought something that was unrelated to their manufacturing process.

So, that, combined with the 1981 tax bill, really set the stage for big fellows to gobble little fellows solely to rob them of their assets and that is what happened to McClous. McClous was on paper, solid as a rock, but they were just not making any American cars. We were making American cars when our production was very low.

They had invested in state of the art improvement and got themselves up to here in debt and they had no cash flow, and a big outfit would have grabbed them in a minute, closed them down and taken all their assets and sold them off and made a profit.

Mr. MARTINELLI. That is what happened with Otis.

Mr. FORD. And not created a single job. Now, we cannot do anything on this committee about that, but this legislation hopefully will get people, like the three of you here, into the game so that you can at least know what is going on and bring it to other peoples' attention.

I met yesterday with the Michigan Manufacturers Association. I heard a lot of what we heard this morning, and one thing that they threw at me is who is going to pay for this, what is going on. They were quite amazed when I told them how much activity already is going on in Michigan with the Department of Commerce, with the Pick Councils in their own area. I asked if any of them served on a Pick Council and none of them had ever heard of it.

The whole purpose was to get business involved in doing this. So, you know, there are all kinds of people just waiting out there. If you get in trouble, you send up a flare, everybody will be in here and they are not going to invent the wheel, but they have got some experience, they are doing this in other parts of the state, and they think that what we are talking about here when we talk about setting up the Administration's proposal of a state agency that you have to go out and hire a whole new bureaucracy.

Most of the states that suffered through this for a very long period of time have set up strategies to deal with it and they have the people in place. They do not have to have a new secretary of something and a new bureau of something to do it. They have become accustomed—adversity draws you together some times. They have become accustomed to working.

Your testimony very clearly shows how in a state like Washington, which Midwesterners like me, except for my experience with Mr. Meeks, never thought of as an industrial state at all, has moved so much ahead of the curve in terms of the rest of the country. In New York, you do not think of the State of Washington worrying about this sort of stuff. All we ever see from Washington is strawberries and apples and things like that.

Mr. TURNER. That is the other side of the state.

Mr. FORD. That is the other side.

I want to just say that all of us support the presentation and appreciate the dimensions that you have given us, and, Mayor, we want the help that your association can give us so well very badly and we will do anything we can to cooperate with your people to

accommodate your concerns and you can have any one of us you want at any kind of meetings you want to give them that kind of a chance.

Mr. MARTINELLI. The reason why—I just want to say the reason why I suggested chief elected official is because you are talking to the other part of this, which is dislocated workers, and that works through the Pick and the JTPA, and the legislation there means chief elected official. I do not want the conflict in here, and I think the chief elected official is the political entity in a way because he is the chief elected official who is the one that should be notified.

I think whether he is the barber, as you might say, or not, he is the chief elected official and if he is, he is the one in regards to having the responsibility, sharing with the Pick, by the way, the legislation shares the chief elected official's input and also Pick Council on an equal basis, either one can veto what the other does.

That is why I think it would be more consistent with the legislation. Our association or our conference will be working with you.

Mr. FORD. Thank you very much.

Mr. MARTINEZ. Thank you very much, Mr. Ford.

Mr. FRICANO. I would like to make one other comment, Mr. Chairman, on the record on the significance of the Trico situation.

When you talk about notification and consultation and Congresswoman Roukema left whom we met with last year for about three hours because her district is not too far from our regional headquarters in Cranford, New Jersey. The significance is when she was talking to one of the panels about the thirty days or forty-five days, that is not going to do in these kinds of situations.

The study that we have listed to Cornell University through the Fuse Program took almost eight months to complete. When you start looking at a company, even a small one as Trico, which now only has 3,000 workers, even a company that small takes time to delve into it and see what is going on to see how you can turn it around.

The work that Brother Steinwald and Harper and the rank and file did in that time to form those committees also needs time. You cannot restructure a plant and make it more productive overnight, in thirty days or forty-five days.

So, it is significant when we talk about the time for notification, the consultation, getting the work force involved are very significant provisions, and obviously the monetary considerations involved in the relocation are also very necessary.

I want to make that point because those are a very important part of what we did in Trico. You do not find too many Trico Products out there that might give you the length of time to do this. That is why it is necessary that it be mandatory. We did a tremendous amount of work in there and if ever in the course of your proceedings, you want to draw on some of our rank and file workers that can tell you what is happening at the grass roots level, I recommend that you take that time with Brother Steinwald and Harper and they will give you an eagle's view of what is going on there.

Mr. MARTINEZ. I think the committee has a pretty good sense of what is going on.

You know, one of the things is that if you are against something, you can always find some reason, whether you can justify your position or not by that reason.

The simple bottom line is that corporate giants who are resisting this more than anyone else sometimes do so from the perspective that they do not want the Government or anyone else interfering in their corporate decisions, and that any kind of notification or mandatory consultation falls in the frame of that corporate decision.

The fact is that they do not give a damn about the people out there that suffer one trauma. I think there are too many that have gone to work and found a notice plastered on the door saying there is no longer a company or employment there, and walking away wondering what they are going to do to support the wife and two or three children and support that house payment they have. With cities, an extra burden is created of providing police and fire protection to a certain level because those companies buildings are still there but now they do not have a tax base to support those services and it is left to the rest of the taxpayers to share in the burden of that cost.

I think that what you said, Mr. Turner, about JTPA and the Dislocated Worker Title is very true. It was in its embryonic stage. It is now in its infancy. It is working. The GAO did a study that proved that it is working. The short falls that they point out really lie with the Department of Labor because the technical assistance and guidance they should be providing has not been there. They seem to want to leave that up to the states, but in some cases you have a governor that is not sympathetic to the program and does not take the necessary steps to help the program along.

But in spite of that, they are succeeding. The PICs and the Councils all agree that Title III is working. They also realize that there are some things still needed. Many of the dislocated workers, that percentage of twenty percent who are fifty-five or older, only eight percent of them are receiving the advantages of the program, and many workers need remedial education, but only four percent are receiving it.

So, we find there are inadequacies that we have to correct before we decide to dump the dislocated worker program.

Well, I thank you for your testimony.

Mr. TURNER. Thank you.

Mr. MARTINEZ. Thank you all.

We are in recess. We are adjourned.

[Whereupon, at 1:10 p.m., the subcommittees adjourned.]

[Additional material submitted for the record follows.]

William H. Dempsey
President

ASSOCIATION
OF AMERICAN
RAILROADS

March 31, 1987

The Honorable Matthew Martinez
Chairman, Subcommittee on
Employment Opportunities
Committee on Education and Labor
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Martinez:

The Association of American Railroads (AAR) would like the record to reflect its views on H.R. 1122, the Economic Dislocation and Worker Adjustment Assistance Act, on which a joint hearing was held March 17, 1987. The AAR is a trade group representing most of the nation's major freight railroads.

While the AAR applauds the major aim of the legislation, which is to enable displaced workers to receive retraining and to increase their opportunities for reemployment, it is concerned with the new regulatory constraints placed upon plant closings and layoffs in Part C of the bill. The advance notification and consultation requirements, if enacted, will impose upon business in general an unreasonable burden by delaying the implementation of economic decisions and requiring that businesses sustain the economic losses that result from such delay. The railroad industry recognizes the hardship a decision to significantly change operations may cause some employees. But the welfare of all rail employees depends upon the ability of the industry to respond quickly to competitive pressures both in this country and abroad; and that sometimes, unfortunately, means uninhibited plant closings and employee layoffs.

That is not to say that the protection of employees is to be ignored. Indeed, unemployment benefits, severence pay, and supplemental benefits are just some of the buffers which have been erected, with industry assistance, to ameliorate the effects of worker displacement. While all these programs may not be available to every American worker and may not completely compensate employees during their search for new jobs, the AAR cannot see how the advance notification and consultation requirements of H.R. 1122 will put dislocated workers in a much better position. The topics the bill requires to be addressed in consultations with employee representatives will have been exhaustively explored before a decision as drastic as closing a plant, or laying off hundreds of employees, is made. Furthermore, in the three to six month period required for notification and consultation, customers, given such

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a relatively long warning period, will search for and find new suppliers. This will lead to a further draw-down on company revenues which could ultimately have adverse effects on other company operations and, eventually, their workers.

In addition to these general observations, the AAR would like Congress to take notice of the already regulated labor environment in which the railroad industry operates. The Interstate Commerce Commission (ICC), in regulating the rail industry's equivalent of a plant closing—the rail line abandonment--is obligated under 49 U.S.C. § 10903 to protect the interests of employees. This has come to mean that abandonments will be approved by the ICC only if the abandoning railroad agrees to pay labor protection to affected employees which, in the case of abandonments, is the guarantee of wages and benefits for up to six years. In addition, when approving rail mergers and in granting trackage rights applications, the other two situations in which rail employees are most likely to suffer employment losses, the ICC, under the amended Interstate Commerce Act, must impose similar labor protection conditions. It is worth noting that the ICC, while it may chose to deregulate such transactions and changes in operations by virtue of the exemption powers granted by 49 U.S.C. § 10505, must nevertheless continue to impose labor protection conditions because of a Staggers Act amendment to that section.

The rail industry is the only American industry which is mandated by statute to pay labor protection. It is the position of the AAR that such conditions not only adequately provide for displaced workers, but also ensure that railroad companies will abandon rail lines only after much deliberation and consideration. In short, the present regulatory structure accomplishes the goals of the proposed legislation—to soften the effects of plant closings on employees and to ensure that major changes in operations occur only after all alternative avenues have been explored.

H.R. 1122, as presently drafted, will impose the additional burdens of advance notification and consulation onto the present regulated process of rail system restructuring. Given the already generous severance package of wages and benefits accruing to affected rail employees, there is no need to provide for these protections of questionable value but of unquestionable cost. The AAR opposes, in general, the advance notification and consultation requirements contained in Part C of H.R. 1122, but believes they are even less called for in the rail industry. Therefore, a specific provision exempting the rail industry from its reach should be drafted and contained within any final legislation.

Sincerely,

W. H. Dempsey

Testimony of the
HONORABLE SILVIO O. CONTE
before the
House Subcommittee on Labor-Management Relations
March 17, 1987

Mr. Chairman, and members of the Subcommittee, thank you for this opportunity to present testimony in support of H.R. 1122, the Economic Dislocation and Worker Adjustment Assistance Act.

When the Chairman, Bill Ford, and I introduced H.R. 1616 last Congress, we began a process. Today's hearing is another step in that process to secure for dislocated workers and communities the rights and assistance they need in responding to plant closings and mass layoffs. Buttressed by the report of Labor Secretary Brock's Task Force on Economic Adjustment and Worker Dislocation, I believe we are closer to achieving that goal than at any other time in the dislocated worker debate.

As everyone on this Subcommittee knows, appointment of the Task Force was a direct result of the debate generated by H.R. 1616. The Task Force report, which was endorsed by twenty of the twenty-one members, representing a broad cross-section of leaders from business, labor, and academe, is an invaluable contribution and marks, I believe, a turning point in the dislocated worker debate. No longer will we be forced to argue over whether there is a national dislocated worker problem, or whether there needs to be increased federal involvement in tackling that issue. In examining the needs of the nearly 2 million workers who lose their jobs every year, and the adequacy of the private and public responses, the Task Force was crystal clear in its assessment:

> "Worker dislocation is a problem that will not simply disappear if nothing is done. . . . The problem is of sufficient magnitude and urgency that it demands an effective coordinated response with a special priority by both the public and private sector."

To achieve the priority needed, the Task Force recommended creation of a new, $980 million federal worker assistance program. H.R. 1122 incorporates that recommendation. The program would provide states with the resources and guidelines they need to upgrade employment services and create dislocated worker units with the ability to respond rapidly with needed assistance to plant closings and mass layoffs. As the Task Force so forcefully concludes, this program meets not only our humanitarian obligations to dislocated workers, but also is an investment in our country's competitiveness. Indeed, one of the most important contributions of the Task Force was its emphasis on the critical link between dislocated workers and regaining our competitiveness in the international economy. If we are to regain our competitive edge, the Task Force concluded, we must have a well-trained and highly motivated workforce. In a competitiveness-minded Congress, Members will be reassured to know that adoption of H.R. 1122 will make us not only more

compassionate as a society, but more competitive as an economy.

The Brock Task Force also repeated a theme that the Chairman, Bill Ford, and I have been trumpeting the last two years -- advance notice is "absolutely essential" if the assistance we are to provide is to be effective. Coupled with that conclusion were two important findings: that the fears advance notice generates in the business community are not well-founded and that sufficient advance notice is not being provided voluntarily by the private sector. The latter conclusion squares with a 1986 GAO report which found that two-thirds of blue collar workers get less than two weeks notice of impending layoffs. Incredibly, for non-union workers the average notice before layoff is just two days. Accordingly, H.R. 1122 includes mandatory notification and consultation that would be provided on a sliding scale -- 3 months for layoffs of 50 to 100 workers, 4 months for between 100-500, and 6 months for those over 500. Like H.R. 1616, we recognize that employers will sometimes be faced with "unforeseeable business circumstances" that make advance notice impossible. For that reason, an exception to the bill's requirements is permitted in those limited circumstances.

Mr. Chairman, and members of the Subcommittee, you performed yeomen's service last Congress in moving H.R. 1616 forward. The debate that ensued has brought us to this point -- on the verge of passing legislation that is so desperately needed by our working people and the communities they live in. I urge you to use all deliberate speed in marking up H.R. 1122 and moving it on to full Committee. For the twenty million or so workers who lost their jobs in the eleven-year period since Bill Ford introduced the first plant closing bill, it is too late. But for the two million workers who will lose their jobs next year, we can make a difference by passing H.R. 1122. Thank you.

LYNDON B. JOHNSON SCHOOL OF PUBLIC AFFAIRS
THE UNIVERSITY OF TEXAS AT AUSTIN

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March 23, 1987

The Honorable William Ford
United States Congress
309 Cannon Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

I am very pleased to give you my comments on the Economic Dislocation and Worker Adjustment Assistance Act (as presented in the discussion draft of February 6, 1987, by Congressman William Ford of Michigan for himself and Mr. Clay). I strongly support this legislation. We need an effective worker adjustment program in order to provide a more equitable sharing of the costs and benefits of change and to make labor markets function more efficiently. In the absence of such a program, workers and communities will incur most of the costs of change while non-workers will reap most of the benefits. As a consequence, it should not be surprising that workers and their representatives, as well as public officials, will resist changes that could be in the interest of almost everyone. As the advocates of open and expanding international trade systems point out, liberal trading systems can be mutually beneficial, but this is true only if we have international labor standards and worker adjustment programs to channel competition away from decisions that shift the costs of change to workers and communities.

It also makes programmatic sense to have a general adjustment program rather than separate programs for different industries. Serious administrative and equity problems are caused by separate programs for different industries, though in some cases industries themselves should develop their own programs within the framework of a national adjustment policy. It is in the national interest to facilitate the adjustment of the long-term unemployed into new income earning opportunities regardless of the reasons for their dislocation.

With respect to the proposed bill's specific provisions, the findings outlined in the Discussion Draft are based on solid evidence from research, demonstration projects, and experience in the United States and other countries. It is particularly important to have adequate advance notice of plant closings and large-scale layoffs. Advance notice is absolutely essential to effective adjustment programs, not only to allow adequate planning time but also to help workers make personal adjustments to layoffs. In fact, one of the periods of greatest stress for workers is in the time before they are actually terminated from jobs they have held for some time. Advance notice makes it possible to plan and develop activities to relieve that stress. This is important because the stress associated with unemployment causes serious mental and physical health problems for workers.

Many business groups are understandably opposed to mandatory notice requirements for fear notice will accelerate their demise. But it is hard to

imagine that the disadvantage to businesses that already have decided to shift adjustment costs to workers and communities should be allowed to outweigh the advantages of notice to orderly adjustment processes. If it is not politically possible to require mandatory advance notice, this should be done by a carefully crafted set of incentives to give advance notice or disincentives not to do so.

Experience also demonstrates the advantages of cooperation between labor, management, and the government in implementing adjustment programs where public resources are used to support private activities. Neither party can adequately undertake adjustment activities without the cooperation of the other parties. Companies and industries should be encouraged to establish labor-management committees to develop their own adjustment programs.

There also can be little doubt that labor market services for unemployed workers are not adequate under existing laws and programs, in part because of inadequate resources and partly because of faulty design and delivery mechanisms. There is a strong need for much better labor market information and services for all workers and employers, but especially where workers are being displaced. It is, moreover, hard to see how labor market services can be delivered to plant sites in a timely fashion without adequate notice of plant closings. We also need to develop realistic self-directed job search programs. Experience and research in the U.S. and abroad has demonstrated the effectiveness of properly structured job search programs.

It also would help to establish a worker adjustment unit in the Department of Labor and to have the states deliver services to dislocated workers. The creation of a separate unit within DOL could provide greater visibility for, and coordination of, worker adjustment activities. Within the framework of federal standards to protect and promote national interests, the states are logical levels of government to deliver employment and training services. The states have major responsibility for education, health, economic development, welfare, and other human resource development activities that should be coordinated with a worker adjustment services. Experience also shows properly structured rapid response teams can be an effective way to respond to the needs of dislocated workers--provided, of course, that there is adequate notice of major dislocations.

The states likewise should provide unemployment compensation to dislocated workers involved in education and training programs to qualify for new income-earning opportunities. I also strongly support the proposed requirement for tripartite advance committees and encouraging the establishment of demonstration, exemplary, and model programs.

There is, of course, room for debate about the details of a worker adjustment program, but no doubt about the need for such a program. I also believe the discussion draft outlines the main thrust and structure for an adjustment program.

The draft appropriately emphasizes the need for adjustment programs for plant closings and mass layoffs. While these activities are an important place to start with such activities, it would be desirable to have adjustment programs for all dislocated workers, regardless of the cause of their unemployment.

I am sorry that my schedule did not permit me to appear at the subcommittee's hearings on this important legislation. However, please know that I am available to help the subcommittee in any way I can with this important legislation.

Respectfully,

Ray Marshall

SUPPLEMENTAL STATEMENT

TO TESTIMONY ON THE ECONOMIC DISLOCATION AND WORKER ADJUSTMENT ASSISTANCE ACT OF 1987, H.R. 1122

BY THE NATIONAL ASSOCIATION OF MANUFACTURERS

BEFORE THE SUBCOMMITTEES ON LABOR-MANAGEMENT RELATIONS AND EMPLOYMENT OPPORTUNITIES

COMMITTEE ON EDUCATION AND LABOR

MARCH 17, 1987

Change is an inevitable and integral part of the nation's efforts to promote and maintain strong, self-sustaining, non-inflationary growth. In the past, that change was slower, and in some ways, more manageable. Today, however, intense world competition and rapid technological advancements create a scope and velocity of change that is unprecedented in our history.

It is time to squarely face the competitive challenges in the decades ahead and to firmly grasp the opportunities available for economic growth, an increased standard of living and enhanced quality of life.

A commitment, a national commitment to competitiveness, is essential to our ability to profit from change. The National Association of Manufacturers fully understands that the elements of that commitment are going to be debated -- that methods may

vary and that ideologies will clash. In one area, however, there appears to be universal agreement -- that true competitiveness requires a commitment to human resources.

Recently, the NAM board of directors adopted policy, "A Competitive Workforce in a Global Economy," which is attached as addenda to this statement, that outlines NAM member commitment to creating and maintaining an educated and skilled workforce capable of meeting today's and tomorrow's challenges.

A critically important element is the development of approaches that minimize the adverse impacts of change and facilitate adjustment. It is especially heartening to note that, in general, the proposal for worker readjustment in Parts A and B of H.R. 1122 follow the recommendations reached by the representatives of labor, business, academia and government who labored for a year on the Brock Task Force to reach a consensus.

NAM believes that a competent, versatile, systematic and voluntary approach to readjustment is of great importance to the country and has identified key elements that we believe would characterize the best approach:

(1) cost-effectiveness,

(2) broad coverage,

(3) easy access,

(4) simplicity,

(5) limited red tape,

(6) individual choice,

(7) flexibility and

(8) linkages with existing programs.

NAM also feels that to be more effective, public education programs and private sector readjustment efforts should be coordinated.

Part A of H.R. 1122 meets many of these criteria and most importantly, emphasizes reemployment and moves beyond the immediate income replacement needs of dislocated workers. Part A provides for versatility in use of funds where most needed and flexibility in coordinating public and private sector efforts -- all components that help ease the difficulties of adjustment and facilitate rapid reemployment.

In addition, incentives to reemployment are provided through continuing eligibility for unemployment compensation benefits for individuals attending education and training programs authorized by the Act and through funds provided for support services such as child care, commuting assistance and financial and personal counseling. Valuable services, such as improved labor market information; job search assistance and relocation assistance are also provided for. In addition, Part A recognizes the importance of basic education and literacy instruction in preparing workers for increasingly demanding job skills.

Part B's provision for demonstration projects is a practical way to explore the potential of innovative ideas and worth trying.

NAM supports the overall goals of Parts A and B of H.R. 1122, but prefers the comprehensiveness of the Trade, Employment and Productivity Act of 1987, H.R. 1155 and S. 539, proposed by the Administration and believe that if offers a stronger, more

effective delivery system.

Specifically, we approve of the Administration's proposals to build upon the successes and experience of Private Industry Councils (PIC) and Service Delivery Areas (SDA) under Title III of the Job Training Partnership Act (JTPA), the coordination and consolidation of existing programs to assist dislocated workers, and greater State flexibility.

Private sector participation is essential to ensure that programs respond to state and local labor market conditions and that training and vocational educational programs are directed to meet the skill demands of employers. The Administration proposal draws on the best features of the JTPA dislocated worker program, builds upon the successes of current delivery mechanisms and services, and strengthens the private sector role by providing for increased guidance and oversight for the planning and delivery of services.

States have primary responsibility under the Administration proposal. Governors are given the authority and flexiblity to choose the most effective service delivery system based on the State's resources, strengths and other unique characteristics. To help governors create readjustment delivery systems that fit into the state's evolving human resources and economic development systems, the existing state job training coordinating councils and PICs are given specific roles in the areas of policy, coordination, program design and oversight. The state council, retitled the State Training and Employment Council, would be chaired by a private sector member and members

representing the private sector would comprise not less than half of the total membership. This is an important component in building and maintaining public-private sector cooperation.

An interesting feature of the Administration's bill emphasizes one of the NAM criteria -- individual choice -- for a successful readjustment program: the certificate of eligibility for training. Dislocated workers who opt for whatever reason to forego training and instead choose re-employment may redeem the "certificate of eligibility" at any time over a two-year period -- depending on the availability of funds -- and take training or obtain a General Equivalency Diploma (GED). This provision recognizes the varying circumstances individual workers may face at the time of dislocation and leaves the door open for helping workers maximize their skills and their opportunities.

Although details and specific provisions may differ, one aspect rings clear throughout the various proposals for worker readjustment assistance before Congress this session: That our human resources are critical to meeting our continuing competitive challenges. NAM is encouraged at this consensus and will work willingly to achieve the best program possible.

100TH CONGRESS
1ST SESSION

H. R. 1122

To implement the recommendations of the Secretary of Labor's Task Force on Economic Adjustment and Worker Dislocation, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 18, 1987

Mr. FORD of Michigan (for himself, Mr. CLAY, Mr. MARTINEZ, Mr. CONTE, and Mr. EVANS) introduced the following bill; which was referred to the Committee on Education and Labor

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A BILL

To implement the recommendations of the Secretary of Labor's Task Force on Economic Adjustment and Worker Dislocation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Economic Dislocation and Worker Adjustment Assistance Act".

SEC. 2. AMENDMENT TO TITLE III OF THE JOB TRAINING PARTNERSHIP ACT.

(a) IN GENERAL.—Title III of the Job Training Partnership Act (29 U.S.C. 1651 et seq.) is amended to read as follows:

"TITLE III—EMPLOYMENT AND TRAINING ASSISTANCE FOR DISLOCATED WORKER

"PART A—DISLOCATED WORKER ADJUSTMENT SERVICES

"DEFINITIONS

"SEC. 301. As used in this title—

"(1) The term 'Unit' means the Dislocated Worker Unit established by section 304.

"(2) The term 'State unit' means the unit or office created or designated under section 305(a)(1).

"(3) The term 'eligible dislocated worker' means an individual who—

"(A) has been terminated or laid off or has received a notice of termination or layoff from employment, and is unlikely to return to his or her previous industry or occupation;

"(B) has been terminated, or who has received a notice of termination of employment, as a result of any permanent closure of or substantial layoff at a plant or facility;

"(C) has experienced long-term unemployment and has limited opportunities for employment or reemployment in the same or a similar occupation in the area in which such individual resides, including any older individual who may have substantial barriers to employment by reason of age; or

"(D) was self-employed (including a farmer) and is unemployed as a result of general economic conditions in the community in which he or she resides or because of natural disasters subject to the next sentence.

The Secretary shall establish categories of self-employed individuals and of economic conditions and natural disasters to which subparagraph (D) of the preceding sentence applies.

"(4) The term 'rapid response team' means a team established by the State unit for the purpose of providing prompt delivery of services at the site of the plant closing or mass layoff, as required by section 306(b).

"FINDINGS

"SEC. 302. (a) The Congress, in accord with the Secretary of Labor's Task Force on Economic Adjustment and Worker Dislocation, finds that—

"(1) the ability of the United States economy and United States workers to move quickly and effectively to emerging work and new jobs is a strong competitive asset and should be supported and enhanced;

"(2) some plant closings and permanent layoffs are inevitable and can be a concomitant part of achieving and maintaining a competitive, healthy economy;

"(3) the loss of experienced employees from the workforce weakens overall United States productivity;

"(4) it is therefore in the national interest to foster, through private and public means, the reemployment of workers permanently displaced from employment;

"(5) technical assistance must be made available at the local level to help employers resolve their human resource or other problems and remain economically healthy and viable; and

"(6) fully meeting the needs of displaced workers and impacted communities can only be accomplished within the framework of an economy providing an adequate number of jobs.

"(b) The Congress further finds that—

"(1) experience in the field of economic adjustment in the United States and other industrialized na-

tions clearly demonstrates that successful adjustment requires that—

"(A) adjustment efforts should begin in advance of a plant closing or mass layoff rather than after it, thus minimizing disruption in the workers' lives;

"(B) time for research and planning is necessary and, therefore, advance notification is an essential component of a successful adjustment process;

"(C) adjustment is best accomplished through action by those directly involved, preferably through publicly supported joint employer-worker committees that engage in private adjustment measures; and

"(D) the role of government is to encourage and support, not supplant, private means;

"(2) worker adjustment committees, operating in a manner consistent with the principles set forth in section 307(b), are the most promising means of obtaining that successful adjustment; and

"(3) it is important to make technical assistance available at the local level to help employers resolve their human resource and other problems and remain economically healthy and viable.

"(c) The Congress further finds, with respect to labor market services delivered under existing laws and programs, that—

"(1) labor market services are not routinely available at the plant site in a timely fashion;

"(2) displaced workers are not receiving good information about the jobs and wages available in local and neighboring labor markets; and in many States, the information provided to workers is neither current nor detailed enough to give an adequate picture of what occupations are in demand locally;

"(3) displaced workers need effective assessment, testing, and vocational counseling, including the preparation of an individual readjustment plan as the key to occupational or career change;

"(4) while the ability to engage in self-directed job search is an important skill which all displaced workers in a dynamic economy must possess, the job search training currently provided to displaced workers is uneven in quality and availability; and

"(5) displaced workers (A) can benefit significantly from an aggressive, client-oriented job development effort wherein specific job vacancies are developed for specific individuals, and (B) do not benefit from the

routinized system of job listings and referrals, as currently emphasized by the Job Service.

"PURPOSE

"SEC. 303. It is therefore the purpose of this title to provide for—

"(1) a redirection and improved application of existing resources; and

"(2) the provision of new Federal funds,

for assisting dislocated workers to adjust to economic change.

"ESTABLISHMENT OF DISLOCATED WORKER UNIT IN THE DEPARTMENT OF LABOR

"SEC. 304. (a) There shall be established within the Department of Labor a Dislocated Worker Unit, which shall be responsible for the administration and supervision of the programs established under this title.

"(b) The head of the Unit shall be a Director appointed by the Secretary.

"(c) The Unit shall, under the direction of the Secretary, be responsible for—

"(1) distributing funds to States in accordance with the requirements of section 307(a)(1);

"(2) providing funds to exemplary, demonstration, and model programs on plant closings and worker dislocation;

"(3) otherwise allocating discretionary funds to projects serving workers affected by multi-State or in-

dustry-wide dislocations and to areas of special need in a manner that efficiently targets resources to areas of most need, permits a rapid response to economic dislocations, and promotes the effective use of funds;

"(4) monitoring performance and expenditures and annually certifying compliance with standards prescribed by the Secretary under section 307(b);

"(5) conducting research and serving as a national clearinghouse for gathering and disseminating information on plant closings and worker dislocation; and

"(6) providing technical assistance and staff training services to States, communities, businesses, and unions, as appropriate.

"(d)(1) The Secretary is authorized to employ such personnel as is necessary to carry out the functions of the Unit under this title.

"(2) The Secretary may secure from any Federal executive agency, including any independent establishment or instrumentality of the United States, information, estimates, and statistics required in the performance of the Secretary's function under this title.

"(3) The Secretary may obtain the services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code, to carry out the functions of the Unit under this title.

"STATE DELIVERY OF DISLOCATED WORKER SERVICES

"SEC. 305. (a) In order to receive an allocation of funds under section 307(a), the Governor of a State shall submit to the Secretary, on a biennial basis, a State plan describing in detail the programs and activities that will be assisted with funds provided under this title and demonstrating to the satisfaction of the Secretary that—

"(1) the Governor will create or designate an identifiable State dislocated worker unit or office with the capability to respond rapidly, on site, to plant closings and mass layoffs;

"(2) the State unit will make appropriate training and reemployment assistance available to eligible dislocated workers through the use of rapid response teams or through service delivery offices or other appropriate organizations;

"(3) the Governor has the authority to allocate resources among service delivery functions and among sub-State areas in need;

"(4) the State unit (A) will operate a monitoring and reporting system which provides an adequate information base for effective program management, review, and evaluation, and (B) will have a component capable of providing or obtaining financial and technical advice and liaison with economic development agencies and

organizations for the purpose of developing strategies to avert a plant closing or mass layoff;

"(5) the State unit will receive notification of plant closings and large-scale layoffs from employers pursuant to section 352(a)(2) of this Act and will transmit a copy of such notice to each taxing authority within the State that is reasonably likely to be affected by such closing or layoff;

"(6) the State unit will have the authority to coordinate and facilitate the provision of all resources available to the State for displaced workers, including the Job Service and the unemployment insurance system;

"(7) the State unit has the capacity to disseminate throughout the State information on the availability of services and activities under this Act;

"(8) the State plan includes specific goals regarding the enrollment and placement of individuals requiring special assistance to overcome barriers to employment;

"(9) any program conducted with funds made available under this title which will provide services to a substantial number of members of a labor organization will be established only after full consultation with such labor organization;

"(10) the State does not disqualify any individual from continuing to receive unemployment compensation for failure to be available for work during any period that the individual is enrolled in and regularly attending an education or training program under this title;

"(11) the State will not prescribe any standard for the operation of programs under this part that is inconsistent with section 307(b)(3);

"(12) the Governor has established (and provide administrative support to) a tripartite advisory committee composed equally of representatives of (A) labor, (B) management, and (C) public and private nonprofit organizations, agencies, or instrumentalities to advise the Governor and the State unit concerning the administration of programs under this title; and

"(13) such advisory committee has reviewed and commented in writing on the plan, and such comments are submitted with the plan to the Secretary.

"(b) The Secretary shall review any plan submitted under subsection (a), and any comments thereon submitted by the State advisory committee pursuant to section 308(b)(4), and shall notify a State as to any deficiencies in such plan within 30 days after submission. Unless a State has been so notified, the Secretary shall approve the plan within 45 days after submission. The Secretary shall not finally disapprove

the plan of any State except after notice and opportunity for a hearing.

"(c) Any plan submitted under subsection (a) may be amended at any time to describe changes in or additions to the programs and activities set forth in the plan.

"(d)(1) Whenever the Secretary receives a complaint or a report that a State is not complying with the provisions of the State plan required by this section, the Secretary shall investigate such report or complaint.

"(2)(A) Whenever the Secretary determines that there has been such a failure to comply, the Secretary may withhold an amount not to exceed 10 percent of the allocation of the State for the fiscal year in which the determination is made for each such violation.

"(B) No determination may be made under this paragraph until the State affected is afforded adequate notice and opportunity for a hearing.

"USE OF FUNDS; SERVICES TO BE PROVIDED

"SEC. 306. (a) Funds allocated to a State under section 307(a) may be used—

"(1) to provide plant-specific adjustment assistance in accordance with subsection (b);

"(2) to deliver, coordinate, and integrate normal labor market services in accordance with subsection (c);

"(3) to identify and correct the basic educational deficiencies of dislocated workers in accordance with subsection (d);

"(4) to provide vocational and on-the-job training in accordance with subsection (e);

"(5) to provide income support in accordance with subsection (f); and

"(6) for each of fiscal years 1988 and 1989, to continue to provide any program, activity, or service that was provided with funds made available under title III of this Act before the enactment of the Economic Dislocation and Worker Adjustment Assistance Act.

"(b)(1) Funds allocated to a State under section 307(a) may be used to establish and maintain a capability to respond immediately to plant closings and mass layoffs within the State by prompt delivery of appropriate information and necessary dislocated worker services to the site of such closing or layoff, whenever possible.

"(2) In providing such prompt delivery of services, the State unit shall, in accordance with the standards prescribed by the Secretary under section 307(b), utilize rapid response teams working with worker adjustment committees at the affected site. Where appropriate, a State may provide funds for exploring the feasibility of having a company or group,

including the workers, purchase the plant and continue its operation.

"(c)(1) Funds allocated to a State under section 307(a) may be used to provide normal labor market services, including—

"(A) job search assistance, including job clubs;

"(B) job development;

"(C) training in jobs skills for which demand exceeds supply;

"(D) supportive services, including child care, commuting assistance, and financial and personal counseling;

"(E) prelayoff assistance;

"(F) relocation assistance; and

"(G) programs conducted in cooperation with employers or labor organizations to provide early intervention in the event of closures of plants or facilities.

"(2) The State unit shall be responsible for arranging for the delivery of such services from one or more service providers that can deliver those services readily and efficiently to the workers affected by a plant closing or mass layoff.

"(d) Funds allocated to a State under section 307(a) may be used, as appropriate, to provide basic education instruction and literacy instruction to an eligible displaced worker in need of such instruction.

"(e) Funds allocated to a State under section 307(a) may be used to provide vocational and on-the-job training designed to improve the employment skills of an adult dislocated worker.

"(f)(1) Funds allocated to a State under section 307(a) may be used to provide income support to an eligible displaced worker who does not qualify o has ceased to qualify for unemployment compensation, during the period that such worker is participating in training or education programs under this title.

"(2) Any such support shall be made available at a level not greater than the higher of—

"(A) the applicable level of unemployment compensation; or

"(B) the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget.

"RESPONSIBILITIES OF THE SECRETARY

"SEC. 307. (a)(1) From the funds appropriated pursuant to section 3(c) for any fiscal year, the Secretary shall—

"(A) allocate 70 percent of such funds in accordance with the provisions of paragraph (2); and

"(B) reserve 30 percent for allocation under Part B of this title.

"(2)(A) Subject to the provisions of subparagraph (B), the Secretary shall allot the amount available in each fiscal

year under paragraph (1)(A) on the basis of the following factors:

"(i) One-third of such amount shall be allotted among the States on the basis of the relative number of unemployed individuals who reside in each State as compared to the total number of unemployed individuals in all the States.

"(ii) One-third of such amount shall be allotted among the States on the basis of the relative excess number of unemployed individuals who reside in each State as compared to the total excess number of unemployed individuals in all the States. For purposes of this paragraph, the term 'excess number' means the number which represents unemployed individuals in excess of 4.5 percent of the civilian labor force in the State.

"(iii) One-third of such amount shall be allotted among the States on the basis of the relative number of individuals who have been unemployed for fifteen weeks or more and who reside in each State as compared to the total number of such individuals in all the States.

"(B) As soon as satisfactory data are available under section 462(e) of this Act, the Secretary shall allot the

amount available in each fiscal year under paragraph (1)(A) to each State so that—

"(i) 75 percent of such amount is allotted, among the States with approved plans, on the basis of the factors described in subparagraphs (A) (i), (ii), and (iii) of this paragraph; and

"(ii) 25 percent of such amount is allotted among such States on the basis of the number of workers displaced by plant closings or mass layoffs in such State in the most recent period for which satisfactory data are available under section 462(e) of this Act.

"(b)(1) The Secretary, on the basis of proposals prepared by the Unit and after obtaining the advice of the committee established under section 309, shall promulgate standards for the conduct and evaluation of programs under this title.

"(2) Such standards shall include a standard to encourage the establishment of worker adjustment committees in accordance with the following principles:

"(A) Where feasible, a worker adjustment committee should be established at each plant closing or large permanent layoff to coordinate the delivery of readjustment services to displaced workers, including help in obtaining new jobs or training opportunities.

"(B) The committees should be composed of management and employee members with an impartial, nonaffiliated chairman and an ex-officio government member.

"(C) An impartial chairman, who has no personal stake in the outcome, should mediate between the parties as necessary, aid the search for joint solutions, help the parties implement their decisions, provide organization and advice, and present a final report to the State government.

"(D) The State may provide not more than 50 percent of the operating cost of the worker adjustment committee.

"(3) No standard prescribed under this subsection or section 106(g) shall count the cost of income support provided under section 306(f) as a part of the cost of enrollment and placement of participants or shall otherwise penalize the provision of such income support.

"(c) In the event that any State fails to qualify for an allocation under section 307(a), the Secretary shall use the amount that would be allocated to that State to provide in that State, directly or through contract, the programs, activities, and services authorized by this title.

"(d)(1) Not more than 25 percent of the funds allocated to a State for any fiscal year under this part are authorized to

remain available for obligation and expenditure during the succeeding fiscal year.

"(2) If any State, in order to respond to a substantial increase in the number of dislocated workers that is not reflected in the allocation under section 307(a)(2)(B) for a fiscal year, appropriates State funds to carry out programs under this title during that fiscal year, the Secretary may, in accordance with regulations prescribed by the Secretary, permit such State to be reimbursed for such State funds from the allocation under such section for the succeeding fiscal year.

"(e) Not more than 15 percent of the funds allocated to a State for any fiscal year under this title may be used by the State to cover the cost of administering programs under this title.

"(f) The Secretary shall ensure that each State unit has access to information collected and maintained under part E of title IV of this Act for the purpose of identifying job skills that would improve the employment opportunities of eligible displaced workers.

"STATE TRIPARTITE ADVISORY COMMITTEE

"SEC. 308. (a) The tripartite advisory committee required by section 305(a)(12) shall be appointed by the Governor after consultation with labor organizations, business, and other organizations affected by worker dislocation, including units of local government.

"(b) The committee shall—

"(1) meet regularly, not less than quarterly;

"(2) review, on a regular basis, the programs and activities conducted under this title within the State;

"(3) submit comments to the Governor and the Secretary on the basis of such review;

"(4) review, and submit comments on, each biennial plan (and amendment thereto) before its submission under section 305; and

"(5) perform such other advisory functions as the Governor may assign.

"(c) Subject to the equal composition requirement of section 305(a)(12), members of the State job training coordinating council established pursuant to section 122 may be appointed to the advisory committee.

"(d) The Governor shall be responsible for ensuring that sufficient funds under this title are provided to the advisory committee for the performance of its functions.

"NATIONAL TRIPARTITE ADVISORY COMMITTEE

"SEC. 309. (a) There is established a National Tripartite Advisory Committee (hereinafter in this section referred to as the "Committee"). The Committee shall be composed of fifteen members appointed by the Secretary as follows:

"(1) Five members shall be representatives of business, including small business.

"(2) Five members shall be representatives of labor.

"(3) Five members shall be representatives of public or private nonprofit agencies, organizations, and instrumentalities.

"(b) The term of office of each member of the Committee shall be 3 years, except that any person appointed to fill a vacancy shall serve for the remainder of the term for which such person's predecessor was appointed.

"(c) The chairperson of the Committee shall be selected by the members of the Committee.

"(d) The Committee shall meet regularly at the call of the chairperson.

"(e) A majority of the members shall constitute a quorum, but a lesser number may conduct hearings.

"(f) The Committee shall review programs under this title and submit an annual report to the Secretary and to the Congress concerning such review.

"(g) The Committee—

"(1) may appoint and fix the compensation of such staff as the Committee deems necessary to assist in carrying out its responsibilities;

"(2) may procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code; and

"(3) may conduct such studies, hearings, research, and similar activities and prescribe such rules and regulations as the Committee deems necessary to assist it in carrying out its responsibilities.

"(h) Members of the Committee shall serve without compensation, but shall be allowed reasonable travel expenses, including a per diem allowance, in accordance with section 5703 of title 5, United States Code, when performing duties of the Committee.

"REPORT

"SEC. 310. (a) The Secretary shall, either directly or by way of grant or contract, provide for an annual evaluation of the program authorized by this title. Such evaluation shall measure the success in placing dislocated workers in unsubsidized employment.

"(b) The Secretary shall prepare and submit to the Congress, as part of the annual report of the Department of Labor, a report on the activities of the Unit established under this title.

"PART B—DEMONSTRATION, EXEMPLARY, AND MODEL PROGRAMS

"SUBPART 1—GENERAL PROVISIONS

STATEMENT OF PURPOSE

"SEC. 321. It is the purpose of this title to encourage the development of demonstration programs and the support of exemplary and discretionary programs for eligible dislocat-

ed workers which are designed to increase the employability of such workers.

"PROGRAMS AUTHORIZED

"SEC. 322. (a) The Secretary shall, from amounts reserved under section 307(a)(1)(B) in each fiscal year, carry out demonstration, exemplary, and model programs in accordance with provisions of this title.

"(b) From amounts reserved in each fiscal year under section 307(a)(1)(B)—

"(1) not more than 20 percent shall be available for making grants under subpart 2, relating to training loan demonstration programs;

"(2) not more than 20 percent shall be available for grants under subpart 3, relating to public works employment demonstration programs; and

"(3) the remaining percent, which shall not be less than 70 percent, shall be available for the purpose of providing training, retraining, job search assistance, placement, relocation assistance, and other aid to individuals who are affected by mass layoffs, natural disasters, and Federal Government actions (such as relocations of Federal facilities) or who reside in areas of high unemployment.

"(c) From the sums required to be available pursuant to subsection (b)(3), the Secretary is authorized directly or through grants to or contracts with State and local public

agencies and nonprofit private organizations, to support exemplary and model programs and projects which are designed to provide services in accordance with such subsection.

"Subpart 2—Dislocated Workers Training Loan Demonstration Program

"DEMONSTRATION PROGRAMS AUTHORIZED

"SEC. 331. (a) The Secretary shall, from amounts reserved pursuant to section 322(b)(1) in each fiscal year, carry out demonstration programs in accordance with the provisions of this subpart.

"(b) The Secretary is authorized to carry out the provisions of this subpart either directly or by way of contract or agreement. Whenever the Secretary directly conducts loan demonstration programs under this subpart, the Secretary shall, to the extent practicable, comply with the provisions of section 333, relating to agreements.

"ALLOCATION AND NUMBER OF GRANTS

"SEC. 332. (a) The Secretary shall allocate the amounts reserved pursuant to section 322(b)(1) among communities in the country having the largest number of dislocated workers.

"(b)(1) In carrying out the provisions of subsection (a), the Secretary shall give priority to communities with the highest concentrations of dislocated workers.

"(2) The Secretary shall enter into agreements or conduct directly demonstration programs in at least 5 but not more than 10 communities described in this section.

"AGREEMENTS

"SEC. 333. (a) The Secretary may enter into an agreement with—

"(1) State dislocated workers units established under part A of this title, or

"(2) State or local public agencies or nonprofit private organizations selected by the Secretary;

in order to carry out the demonstration program authorized by this subpart.

"(b) Each agreement entered into under this section may provide—

"(1) for the establishment and maintenance of a dislocated workers loan fund for the purpose of this subpart;

"(2) for the deposit in such fund of the funds made available pursuant to this subpart;

"(3) for the deposit in such fund of collections of principal and interest on direct loans made from deposited funds and any other earnings of such funds;

"(4) that any obligation acquired by such fund may be sold at the market price; and the interest on, and the proceeds from the sale or redemption of, any obligations held in such fund, shall be credited to and form a part of such fund;

"(5) that such direct loan funds shall be used only for—

"(A) loans to dislocated workers in accordance with the provisions of this subpart; and

"(B) directly related administrative expenses;

"(6) that the repayment of loans will be made in accordance with a repayment schedule that is consistent with section 334(a)(5); and

"(7) for such other assurances and limitations, including the distribution of assets from the loan funds, established under this title at the completion or termination of the demonstration projects authorized by this subpart as the Secretary may reasonably prescribe.

"TERMS OF LOANS UNDER THE PILOT PROGRAM

"SEC. 334. (a)(1) Loans from any workers loan fund established pursuant to an agreement established under section 333 shall be subject to such conditions, limitations, and requirements as the Secretary shall by regulation prescribe, and shall be made on such terms and conditions as the Secretary, in cooperation with the worker adjustment committee, rapid response team, or State agency, as the case may be, may prescribe.

"(2) The aggregate amount of all direct loans made from funds established pursuant to an agreement under this subpart to each dislocated worker may not exceed $5,000.

"(3) The interest rate on all loans made under this title shall be 2 percentage points below the long-term Treasury obligations.

"(4)(A) The loans made from loan funds established pursuant to such agreements may be used only for—

"(i) vocational and on-the-job training;

"(ii) basic education and literacy instruction;

"(iii) relocation expenses; and

"(iv) child care services.

"(B) The Secretary shall, for the purpose of subparagraph (A)(i), establish criteria for accrediting vocational training programs, including a requirement that any vocational training program qualifying under subparagraph (A) have a demonstrated ability to place participants successfully in jobs.

"(C) Not more than 25 percent of the aggregate amount of loans made to a single dislocated worker may be used for the activities described in clauses (iii) and (iv) of subparagraph (A) of this paragraph.

"(5) Loans under this subpart shall be made pursuant to agreements which—

"(A) require a repayment period which—

"(i) begins not earlier than 6 months after the completion of training for which the funds were sought or when the income of the dislocated worker is equal to or greater than ⅔ of the

income level of the dislocated worker for the three-month period preceding the determination of dislocation, whichever is later; and

"(ii) is for a period not to exceed 10 years;

"(B) provide for deferments of principal and for interest accrual during such deferments;

"(C) provide such loan cancellation as is consistent with the purpose of this subpart; and

"(D) require the recipient to cooperate with evaluation studies conducted pursuant to section 335.

"(b) The Secretary may prescribe such other terms for loans made pursuant to this subpart as the Secretary determines will carry out the provisions of this subpart.

"RESEARCH AND EVALUATION

"SEC. 335. (a)(1) The Secretary shall, based upon the projects assisted under this subpart and independent research, conduct or provide for an evaluation of the feasibility of the direct loan approach to achieving the objectives of this subpart. The Secretary shall consider—

"(A) the identity and characteristics of dislocated workers who take out direct loans;

"(B) the purposes for which the loans are used;

"(C) the employment obtained with the assistance provided under this subpart;

"(D) the compensation paid to such workers;

"(E) the repayments schedules; and

"(F) the attitudes of the participants in the program.

"(2) The evaluations required under paragraph (1) shall be conducted by at least 2 different public agencies or private nonprofit organizations.

"(b) The Secretary shall prepare and submit to the Congress a report of the evaluations required by this subsection not later than October 1, 1989, together with such recommendations, including recommendations for legislation, as the Secretary deems appropriate.

"Subpart 3—Public Works Employment Demonstration Program

"DEMONSTRATION PROGRAM AUTHORIZED

"SEC. 341. (a) The Secretary shall, from the amount reserved pursuant to section 322(b) in each fiscal year, carry out public works employment demonstration programs in accordance with the provisions of this part.

"(b) The Secretary is authorized to enter into such contracts with private industry councils as may be necessary to carry out the provisions of this subpart.

"(c) The Secretary may waive—

"(1) the testing requirement in section 343(b)(1) for physically handicapped individuals and for individuals requiring special education; and

"(2) the requirement in section 344(c) relating to a 32-hour workweek for unusual circumstances.

"ALLOCATION AND NUMBER OF GRANTS

"SEC. 342. (a) The Secretary shall allocate the amounts reserved in each fiscal year pursuant to section 322(b)(3) for this subpart among cities and counties—

"(1) which are geographically diverse;

"(2) which represent urban and rural areas; and

"(3) for which the unemployment rate for the 6 months before the determination under this part exceeded the national average rate of unemployment by at least 2 percent.

"(b) The Secretary shall enter into agreements or conduct demonstration programs in not less than 5 nor more than 10 cities or counties under this subpart.

"PARTICIPATION ELIGIBILITY AND EDUCATION REQUIREMENT

"SEC. 343. (a) For the purpose of this subpart, an individual is eligible to participate in the demonstration project assisted under this subpart if the individual—

"(1) is an eligible dislocated worker, as defined in section 301(3), who has been unemployed for at least 15 weeks before the determination of employment under this part;

"(2) is an individual who has been unemployed or who has been without steady employment for a period of two years prior to such determination; or

"(3) is an individual who is a recipient under a State plan approved under part A of title IV of the Social Security Act, relating to aid to families with dependent children for a period of at least 2 years.

"(b)(1) Each participant shall be tested for basic reading and writing competence by the private industry council prior to employment by a job project assisted under this subpart.

"(2)(A) Each participant who fails to complete satisfactorily the basic competency tests required by paragraph (1) of this subsection shall be furnished counseling and instruction.

"(B) Each participant in a job project assisted under this subpart, shall, in order to continue such employment, have received a secondary school diploma or its equivalent, or maintain satisfactory progress toward such a diploma.

"(C) Each participant with limited English speaking ability may be furnished such instruction as the private industry council deems appropriate.

"LOCAL JOB PROJECTS

"SEC. 344. (a) Each private industry council participating in the demonstration program authorized by this subpart shall select job projects to be assisted under this part pursuant to guidelines established by the Secretary. Each such job

project selected for assistance shall provide employment to eligible participants.

"(b) No project may be selected under this section if an objection to the project is filed by 2 representatives of the businesses community or by 2 representatives of labor organizations who are members of the private industry council. If there are not two members of a private industry council who are representatives of labor organizations then two representatives of labor organizations who are members of the tripartite advisory committee of the State established under section 308 may exercise the objection option authorized by this subsection for that private industry council.

"(c) Each eligible participant employed in a job project assisted under this subpart may not be employed on such project for more than 32 hours per week.

"(d) Not more than 10 percent of the total expenses of the demonstration project in each community may be used for transportation and equipment.

"(e) The private industry council shall select project managers on a project-by-project basis. Each such manager shall be paid the local prevailing wage.

"BENEFITS; JOB CLUBS

"SEC. 345. (a) Each eligible participant who is employed in a job project assisted under this subpart shall receive wages equal to the higher of—

"(1) the minimum wage under section 6(a)(1) of the Fair Labor Standards Act of 1938; or

"(2) the amount which the eligible participant received in welfare benefits pursuant to the State plan approved under part A of title IV of the Social Security Act or in the form of unemployment compensation, if applicable, plus 10 percent of such amount.

"(b) Each eligible participant who is employed in projects assisted under this Act shall be furnished benefits and employment conditions comparable to the benefits and conditions provided to other employees employed in similar occupations by the same employer but no such participant shall be eligible for unemployment compensation during or on the basis of employment in such a project.

"(c) Each private industry council shall establish for the area in which the demonstration is conducted job clubs to assist eligible participants with the preparation of resumes, the development of interviewing techniques, and evaluation of individual job search activities.

"PROJECT SELECTION RULES

"SEC. 346. In selecting projects pursuant to criteria established by the Secretary, each private industry council shall—

"(1) select projects, to the extent feasible, designed to develop skills which are marketable in the

private sector in the community in which the project is conducted; and

"(2) select projects which show potential for assisting eligible participants who are employed in the project to find jobs in the private sector.

"EVALUATION

"SEC. 347. (a)(1) The Secretary shall either directly or by way of contract evaluate the success of the employment demonstration program authorized by this subpart.

"(2) The evaluations required by paragraph (1) of this subsection shall be conducted by at least 2 different public agencies or private nonprofit organizations.

"(b) The Secretary shall prepare and submit to the Congress a report on the success of the employment demonstration program authorized by this subpart not later than October 1, 1989, together with such recommendations, including recommendations for legislation, as the Secretary deems appropriate.

"DEFINITIONS

"SEC. 348. As used in this subpart—

"(1) The term 'participant' means an individual who is determined to be eligible under this subpart.

"(2) The term 'project' means an identifiable task or group of tasks which—

"(A) will be carried out by a public agency, a private nonprofit organization, or a private contractor,

"(B) will meet the other requirements of this part,

"(C) will result in a specific product or accomplishment, and

"(D) would not otherwise be conducted with existing funds.

"PART C—LABOR-MANAGEMENT NOTIFICATION AND CONSULTATION

"DEFINITIONS

"SEC. 351. As used in this part—

"(1) The term 'employer' means any business enterprise in any State that employs—

"(A) 50 or more full-time employees; or

"(B) 50 or more employees who in the aggregate work at least 2,000 hours per week (exclusive of hours of overtime).

"(2) The term 'plant closing or mass layoff' means an employment loss for 50 or more employees of an employer at any site during any 30-day period, except as provided in section 7(c).

"(3) The term 'represen...ive' means—

"(A) an exclusive representative of employees as determined under the National Labor Relations Act (29 U.S.C. 141 et seq.) or under the Railway Labor Act (45 U.S.C. 151 et seq.); or

"(B) in the case of employees not so represented, any person elected by employees to represent them for purposes of the consultation requirement under section 353.

"(4) The term 'affected employees' means employees who have been employed by an employer for more than 6 months and who may reasonably be expected to experience an employment loss as a consequence of a proposed plant closing or mass layoff.

"(5) The term 'employment loss' means (A) an employment termination, other than a discharge for cause, voluntary departure, or retirement, (B) a layoff of indefinite duration, (C) a layoff of definite duration exceeding 6 months, or (D) a reduction in hours of work of more than 50 percent during any 6-month period.

"NOTICE REQUIRED BEFORE PLANT CLOSINGS AND MASS LAYOFFS

"SEC. 352. (a) An employer shall not order a plant closing or mass layoff until the end of a period specified under subsection (b) after the employer serves written notice of a proposal to issue such an order—

"(1) to the representative or representatives of the affected employees with respect to such order or, if there is no such representative, to each affected employee with respect to such order; and

"(2) to the State dislocated worker unit (established under part A of this title) and to the chief administrative officer of the unit of general purpose local government within which such closing or layoff is to occur.

"(b) For purposes of subsection (a), the periods described in this subsection shall be—

"(1) a 90-day period in the case of a proposed plant closing or mass layoff involving not fewer than 50 nor more than 100 affected employees;

"(2) a 120-day period in the case of a plant closing or mass layoff involving more than 100 but fewer than 500 affected employees; and

"(3) a 180-day period in the case of a plant closing or mass layoff involving 500 or more affected employees.

"(c) An employer may order a plant closing or mass layoff before the conclusion of the applicable period described in subsection (b), if unforeseeable business circumstances prevent the employer from withholding such closing or layoff until the end of such period.

"CONSULTATION REQUIRED BEFORE PLANT CLOSINGS AND MASS LAYOFFS

"SEC. 353. (a) An employer shall not order a plant closing or mass layoff unless the employer, upon request—

"(1) has met at reasonable times with the representative or representatives (if any) of the affected employees and of the unit of general purpose local government with respect to a proposal to order a plant closing or mass layoff; and

"(2) has consulted in good faith with such representative or representatives for the purpose of agreeing to a mutually satisfactory alternative to or modification of such proposal, but this requirement to consult shall not compel an employer to agree to such an alternative or modification.

"(b) An employer's obligation to consult as required by subsection (a) of this section commences on the date such employer serves the notice required by section 352(a) and continues until the end of the applicable period described in section 352(b), unless earlier terminated with the consent of the employer and the representative or representatives of the affected employees and of the unit of general purpose local government.

"(c) Each State dislocated worker unit shall establish, for purposes of the consultation requirement under subsection

(a)(2), expedited procedures for the selection of representation by employees not otherwise represented by an exclusive representative of employees as determined under the National Labor Relations Act (29 U.S.C. 141 et seq.) or the Railway Labor Act (45 U.S.C. 151 et seq.).

"DUTY TO DISCLOSE INFORMATION DURING CONSULTATION

"SEC. 354. (a)(1) An employer shall be held to have failed to consult in good faith under section 353 if the employer has not, upon request and in a timely manner, provided the representative of the affected employees or the unit of general purpose local government concerned with such relevant information as is necessary for the thorough evaluation of the proposal to order a plant closing or mass layoff or for the thorough evaluation of any alternatives or modifications suggested to such proposal.

"(2) The information referred to in paragraph (1) shall include—

"(A) the reasons and basis for the decision to order a plant closing or mass layoff;

"(B) alternatives that were considered and the reasons the alternatives were rejected;

"(C) plans with respect to relocating the work of the facility where employment loss is to occur;

"(D) plans with respect to the disposition of capital assets; and

"(E) estimates of anticipated closing costs.

"(b) The information an employer discloses to an employee representative or a unit of general purpose local government under subsection (a) shall be subject to such protective orders as the Secretary may issue, on petition by the employer, to prevent the disclosure of information by such representative or any employee which could compromise the position of the employer with respect to its competitors.

"ADMINISTRATION AND ENFORCEMENT OF REQUIREMENTS

"SEC. 355. (a)(1) Any employer who orders a plant closing or mass layoff in violation of section 352 or 353 by failing to notify or to consult with the affected employees or their representatives shall be liable to each employee who suffers an employment loss as a result of such closing or layoff for—

"(A) back pay for each day of violation at a rate of compensation not less than the higher of—

"(i) the average regular daily rate of compensation received by such employee during the previous 3 years of the employee's employment; or

"(ii) the final regular daily rate received by such employee; and

"(B) the cost of related benefits, including the cost of medical expenses incurred during the employment

loss which would have been covered under medical benefits if the employment loss had not occurred.

"(2) A person seeking to enforce such liability (including a representative of employees) may sue either for himself or for other persons similarly situated, or both, in any district court of the United States for any district in which the violation is alleged to have occurred, or in which the employer transacts business.

"(3) In any such suit, the court may, in addition to any judgment awarded the plaintiff or plaintiffs, allow a reasonable attorneys' fee to be paid by the defendant, together with the costs of the action.

"(b)(1) Any employer who orders a plant closing or mass layoff—

"(A) in violation of section 352 by failing to notify the State dislocated worker unit, or

"(B) in violation of section 352 or 353 by failing to notify or consult with the representative of the unit of general purpose local government,

shall be liable to such State dislocated worker unit or unit of general purpose local government for an amount equal to $500 for each day of the violation.

"(2) A State dislocated worker unit or unit of general purpose local government seeking to enforce such liability may file suit in any district court of the United States for any

district in which the violation is alleged to have occurred, or in which the employer transacts business.

"(3) In any such suit, the court may, in addition to any judgment awarded the plaintiff or plaintiffs, allow a reasonable attorneys' fee to be paid by the defendant, together with the costs of the action.

"(c) Any employee or representative of affected employees or of the unit of general purpose local government who violates a protective order issued by the Secretary under section 354(b) shall be liable to the employer for the financial loss suffered by the employer as a consequence of such violation. Action to recover such liability may be maintained in any United States court of competent jurisdiction.

"(d) For purposes of this section, in determining whether a plant closing or permanent layoff has occurred or will occur, employment losses for two or more groups, each of which is less than 50 employees but which in the aggregate equal or exceed 50 employees, occurring within any 90-day period shall be considered to be a plant closing or mass layoff unless the employer demonstrates that the employment losses are the result of separate and distinct actions and causes and are not an attempt by the employer to evade the requirements of this part.

"PROCEDURES IN ADDITION TO OTHER RIGHTS OF EMPLOYEES

"SEC. 356. The rights and remedies provided to employees by this part are in addition to, and not in lieu of, any other contractual, statutory, or other legal rights and remedies of the employees.

"PROCEDURES ENCOURAGED WHERE NOT REQUIRED

"SEC. 357. It is the sense of Congress that an employer who is not required to comply with the notice and consultation requirements of section 352 or 353 should, to the extent possible, provide notice to, consult with, and disclose information to, its employees about a proposal to close a plant or permanently reduce its workforce.

"EFFECTIVE DATES

"SEC. 358. This part shall take effect on the date which is 6 months after the date of the enactment of this Act.".

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 3(c) of the Job Training Partnership Act is amended to read as follows:

"(c) There are authorized to carry out title III—

"(1) $980,000,000 for fiscal year 1988; and

"(2) such sums as may be necessary for each succeeding fiscal year.".

(c) TECHNICAL AND CONFORMING AMENDMENT.—The table of contents of the Job Training Partnership Act is

1 amended by striking the portion pertaining to title III and
2 inserting the following:

"TITLE III—EMPLOYMENT AND TRAINING ASSISTANCE FOR DISLOCATED WORKER

"PART A—DISLOCATED WORKER ADJUSTMENT SERVICES

"Sec. 301. Definitions.
"Sec. 302. Findings.
"Sec. 303. Purpose.
"Sec. 304. Establishment of dislocated worker unit in the Department of Labor.
"Sec. 305. State delivery of dislocated worker services.
"Sec. 306. Use of funds; services to be provided.
"Sec. 307. Responsibilities of the Secretary.
"Sec. 308. State tripartite advisory committee.
"Sec. 309. National tripartite advisory committee.
"Sec. 310. Report.

"PART B—DEMONSTRATION, EXEMPLARY, AND MODEL PROGRAMS

"Subpart 1—General Provisions

"Sec. 321. Statement of purpose.
"Sec. 322. Programs authorized.

"Subpart 2—Dislocated Workers Training Loan Demonstration Program

"Sec. 331. Demonstration programs authorized.
"Sec. 332. Allocation and number of grants.
"Sec. 333. Agreements.
"Sec. 334. Terms of loans under the pilot program.
"Sec. 335. Research and evaluation.

"Subpart 3—Public Works Employment Demonstration Program

"Sec. 341. Demonstration program authorized.
"Sec. 342. Allocation and number of grants.
"Sec. 343. Participation eligibility and education requirement.
"Sec. 344. Local job projects.
"Sec. 345. Benefits; job clubs.
"Sec. 346. Project selection rules.
"Sec. 347. Evaluation.
"Sec. 348. Definitions.

"PART C—LABOR-MANAGEMENT NOTIFICATION AND CONSULTATION

"Sec. 351. Definitions.
"Sec. 352. Notice required before plant closings and mass layoffs.
"Sec. 353. Consultation required before plant closings and mass layoffs.
"Sec. 354. Duty to disclose information during consultation.
"Sec. 355. Administration and enforcement of requirements.
"Sec. 356. Procedures in addition to other rights of employees.
"Sec. 357. Procedures encouraged where not required.
"Sec. 358. Effective dates.